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ABSTRACT

This document presents an overview of issues concerning the relationship between Federal, State, and local governments in education, the impact of Office of Civil Rights' (OCR) rulings on educational policy-making in New York City, and views held by various individuals towards the impact of such rulings on local policy-making in education. Michael Usdan points out the impact of politics on such issues as educational finance, civil rights and affirmative action, church-state relationships, Federal influence, and teacher negotiations. Norman Redlich provides a geographical review of racial desegregation in the United States as an introduction to his case study presentation of New York City and Office of Civil Rights rulings. Ongoing litigation between the New York City Board of Education and the Department of Health, Education, and Welfare (HEW) concerning HEW's rejection of the Board's application for a basic grant under Emergency School Aid Act (ESAA) is described in the case study presentation. Critical responses and general views submitted by five individuals regarding this case are included. Also presented in relation to the local impact of OCR's rulings is a description of four conference workshops which dealt with various educational controversies and their relationship to OCR policy. Among the issues discussed in this section of the paper is the question of what constitutes the most appropriate criteria for the selection of staff. A bibliography of selected references is also included. (EB)

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Proceedings

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Conference on Public Policy and Education: The Making of Policy

Case Study: The Impact of Office of Civil Rights Rulings on Local Policy Making in Education

May 23, 1978

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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UDO 18892

Edited by
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Center for Advanced Study in Education
The Graduate School and University Center
of the City University of New York

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PROCEEDINGS OF THE

CONFERENCE ON PUBLIC POLICY AND EDUCATION

THE MAKING OF POLICY

Opening Remarks - Seymour P. Lachman, Conference Chairman
Center for Advanced Study in Education
Graduate School-University Center and
Professor of Education, Baruch College, CUNY

Many observers of the educational policy making scene have recently agreed that the decision making process of local authorities are increasingly influenced by federal and state court decisions, regulatory agencies, professional associations and unions, publishing houses and even schools of education.

These developments are interpreted by some as reflecting a serious erosion of the powers of local educational authorities. How accurate are these observations and what options for decision making are still available to them? We at the Graduate School and University Center of the City University of New York wish to study, analyze and evaluate this phenomenon, and hope that this effort may lead to a clarification of these issues, and the development of reasonable alternatives.

We are indeed privileged today to have a group of distinguished speakers. We are also happy to have so distinguished an audience -- leaders of city, state and federal governments and of public and private education in four states, as well as representives of numerous human rights agencies. For most of the day, after the keynote address, we will be discussing a case study that deals with the impact of Office of Civil Rights rulings on local policy making in education. I hope all of us will try to emulate Andrew

Jackson during the battle of New Orleans when he observed, "Let us elevate them guns a little lower." Perhaps then we will be able to analyze the topic cooly, and with hope, even develop a consensus in some areas.

Our keynote speaker this morning comes to us from Detroit, Michigan, and is leaving in 45 minutes for Hartford, Connecticut. Not only is he en route, but he is, in a sense between jobs. Currently the President of the Merrill Palmer Institute in Detroit he will soon be Commissioner for Higher Education in the States of Connecticut. We know him as a colleague, both at Baruch College and at the Graduate Center of CUNY where he taught before going to Detroit. But equally important for us here, Dr. Usdan served for five years as president of the New Rochelle, New York Board of Education. It gives me great pleasure to introduce to you an eminent educator, political scientist and leader in the theory and practice of public policy and education, Dr. Michael Usdan, who will discuss the changing relationship between federal, state and local governments.

THE EVOLVING RELATIONSHIP BETWEEN FEDERAL, STATE, AND LOCAL GOVERNMENTS IN EDUCATION

Michael Usdan
Commissioner for Higher Education
State of Connecticut

My responsibility in keynoting this conference is to duscuss the evolving and changing relationships between federal, state and local governments in education. As participants in this conference, you will be spending almost the entire day discussing and analyzing the impact of Office of Civil Rights rulings on local policy making in education. My assignment in the brief time allotted is to place the critically important civil rights issue, the focus of today's meeting, in the context of profound political and educational changes; changes which in recent years not only have altered traditional modes of educational decision-making but also have transformed in significant ways the respective roles of federal, state and local officials in the formulation of public school policy.

Before discussing these changes, it is necessary to articulate several basic assumptions which underlie this analysis. One assumption is that educational decision-making will become even more enmeshed and indeed integrated with general politics at all government levels. Education has become increasingly publicized at all levels in recent years. Issues like finance, civil rights and affirmative action, church-state relationships, federal influence, and teacher negotiations transcend education per se and permeate American politics.

The financing of education remains probably the single most significant issue confronting the educational policy-makers. As educational costs continue to soar and to consume large proportions of budgets, the politicalization of education will escalate as the political leaders who bear the burden of taxpayer rebellions will be compelled to intervene increasingly in revenue raising and resource

distribution decisions which formerly were made in large measure by the educational interests themselves. These problems will be exacerbated further by the pressures generated by declining school enrollments in an inflationary economy.

In other words, the myth of the separation of politcs and education is in the process of being totally obliterated in state after state and in locality after locality as politicians grapple with the related problems of raising the necessary revenue and distributing funds equitably for education. I believe that the issue of finance has such paramountcy because court decisions as well as increases in decremental budgets in a growing number of jurisdictions will compel the local and state agencies responsible for formulating educational policy to be linked more formally with the executive and/or legislative branches of government. In states such as Massachusetts, Pennsylvania and Virginia, for example, gubernatorially appointed secretaries of education already are responsible for coordinating the activities and programs of the Department of Education and a number of other state agencies concerned with education. I would project that this pattern of state organization for educational decision-making will become more common in the years ahead.

Another assumption I make pertains to the importance of the next decade or so to the crisis in federalism and the viability of state government. Our three-level federal system in which powers and functions are shared among national, state, and local governments leaves much to be desired. The prestigious Committee for Economic Development in its 1967 report, Modernizing State Government, acknowledged that there was "some validity in the facetious comment that our three-level federalism leaves the national government with the money, local governments with the problems, and the states with the legal powers."

The crisis in federalism has been particularly acute historically at the

state level, theoretically, at least, "the keystone in the arch of the federal system--the bridge between local governments concerned with community problems and a central government dealing with nationwide issues." The traditional structural and functional weaknesses of the states have been a major factor in precipitating many of the problems in inter-level governmental relationships which currently exist. Many of the states for a variety of reasons have been less than responsive to the nation's escalating urban problems. As a result, metropolitan centers have had to bypass the states and turn to the federal government for assistance in confronting major problems like housing, welfare, air and water pollution, education, and transportation.

The immediate priority, if the states are to become more responsive to the needs of a society in which three of four Americans live in metropolitan areas, is to undertake on a national scale a comprehensive revitalization and modernization of state government. It is perhaps easy to agree that Washington, D.C. with its massive bureaucracies is not the fount of all wisdom and that decision-making should be decentralized in a large, heterogeneous nation with well over 200 million citizens. A critically important concomitant of this view, however, frequently is not enunciated explicitly; that is the desperate need to strengthen state and local governments so that they have the capacity to discharge the responsibilities which many who fear the accretion of federal power want them to have. The strengthening of the states is of particular significance at a time when there is growing disaffection with duplicative, confusing and proliferating federal grants-in-aid programs and mandates.

The weaknesses of state government are of particular importance in a policy area like education where the states traditionally have had paramount

legal responsibility and authority. The state's legal primacy in education makes any lack of responsiveness on the part of state government to the educational needs of an increasingly urbanized society particularly significant. Indeed, the state legislature has almost complete power over public education except where there are specific restrictions implicit in the state constitution. The weaknesses of state legislatures thus have particular saliency to those who would advocate greater state initiatives in ameliorating the urban crisis. James Bryce, some 75 years ago, was reported to have commented that the convening of the state legislature "is looked forward to with anxiety by good citizens" and "its departure hailed as a deliverance." These apprehensions unfortunately would still be well founded in more than a few states.

Perhaps these historical weaknesses of state legislatures can be emphasized most dramatically by mentioning one estimate which indicates that it costs about twice as much money to operate the entire U.S. Congress as it does to run all fifty state legislatures.

The structural and functional weaknesses of many of the states are rather pervasive and extend into the executive and judicial as well as the legislative branch of government. It is, of course, difficult to generalize about fifty complex and variegated jurisdictions but a cluster of governmental maladies are common to many of the states. The governors, for example, frequently have lacked authority commensurate with their responsibilities. Reflecting the fear of strong executives which dates from colonial times, many governors suffer from "balkanized" authority and must preside uneasily and relatively powerlessly over a fragmented variety of quasi-independent or even autonomous commissions and boards.

Other weaknesses of the states can be cited. Many state constitutions reflecting late nineteenth century norms that the government is best which governs least, are inflexible, confining and overly detailed documents. These archaic state constitutions frequently impose totally unrealistic fiscal constraints and are extremely difficult to amend. They are anachronistic deterrents to attempts to make states more responsive to contemporary needs. The judicial role of the states has been subordinate to that of the federal government as the result of numerous U.S. Supreme Court decisions dating back to John Marshall's time. These decisions have consistently upheld the extension of federal authority and primacy.

The national impact of federal court decisions on the volatile civil rights issue has been particularly profound. The great influence of these decisions upon state and local educational officials requires little elaboration. As the result of court decisions, the federal government since passage of the Civil Rights Act of 1964 has intervened in unprecedented fashion in school matters. These federal interventions have generated widespread political controversy. The civil rights issue became, both in de jure segregated communities of the South and de facto segregated communities of the North, one of the nation's most explosive domestic problems. The federal government's judicial and executive initiatives and dominant role in this issue continue to transform dramatically federal-state-local relationships in education. The focus of this meeting reflects the continuing importance and political sensitivity of this issue.

The status of the states vis-a-vis the federal government also has suffered because state political parties lack the visibility of their national counterparts. State issues are diffused and the responsibilities of state officials are heavily administrative in character. State government lacks glamor and thus

fails to attract the press and television coverage that accrues to more dramatic issues at the federal level where the President wrestles daily with transcendent issues such as war and peace, inflation, and energy. These factors and others generate public apathy and diminish concern for "atomized" and "erratic" state politics.

I have dwelled at such length upon the weaknesses of what John F. Kennedy called "the shame of the states" because a meaningful discussion of educational decision-making and the evolving relationship between federal,state and local governments in education must be predicated upon a realistic assessment of the current capacity of state governments. The states undeniably have made substantial progress and have been strengthened considerably in recent years, paradoxically, largely as the result of the infusion of federal dollars and programs. The critical question, however, remains as to whether the nation with many of its urban centers in acute crisis can afford the luxury of waiting for the states to be more fully tooled up to cope more effectively with education and society's other pressing problems?

The major issue, alluded to earlier, compelling a reassessment of the entire structure of educational decision-making, of course, is school finance. The financing of education, the largest functional category of state spending, is the most critical issue facing many state governments. Money, obviously, is the great source of power in government and the 16th amendment has provided the federal government with the powerful weapon of the graduated income tax. With the federal government collecting two of every three tax dollars and yet paying for less than 10 percent of the bill for elementary-secondary education, the fiscal burden has remained with local and state governments. While the federal govern-

ment has preempted the more elastic graduated income tax, local governments which still pay on a national average 50 percent of the cost of public education are constrained by relatively static revenue sources. The property tax, still the bellwether of school finance as it was fifty and seventy-five years ago when it truly reflected wealth in a more rural economy, has reached the saturation point in many communities. In recent years an unprecedented number of defeats for school budgets and bond issues have dramatized the need to reform an anachronistic tax and revenue structure. The spiraling of inflation, of course, has added additional fuel to these fires of discontent. The impending and nationally significant vote on the Jarvis amendment in California is symptomatic of the intensity of the anti-tax sentiment.

The fragmented and ineffectual political structures and limited sources of revenue which hamstring local governments make grassroots fiscal reform extremely unlikely. The formidable political obstacles, for example, to imposing sales or income taxes on a local, metropolitan or regional area basis are apparent. Many feel that only the state and federal governments have broad enough tax bases to implement much needed tax and revenue reform to redress gross fiscal inequities in education and other social policy areas. Indeed, there is substantial opinion that political configurations even at the state level preclude meaningful fiscal reform. States politics like local politics, it is maintained, tends to be tax politics while federal politics can more readily be programmatic. It is more difficult, some contend, for special powerful interest groups to dominate tax policy at the federal level than it is to control smaller units at the local and state levels.

The school finance crisis at the local level is being intensified by the demands of inflation-beset teachers, which further strain already saturated property tax rates. Instructional costs compose better than 70 percent of most school budgets,

and the recent aggressiveness of once relatively pliant teacher organizations is rapidly pushing local communities beyond their fiscal breaking points. The time-consuming and strenuous demands of the negotiations process and the inadequacies of most local boards of education to cope with them may push the level of teacher negotiations to the regional, metropolitan, state, or even federal level faster than many imagine.

It is possible to forsee at the state level, powerful unified teachers organizations exercising even greater muscle than they now do, particularly in populous industrial states where organized labor is powerful politically. Much energy in the past has been dissipated upon internecine union-NEA conflict. One can predict with some logic that despite short-range deterrents to merger in the not-too-distant future an enormously powerful unified teachers organization might still emerge at the national level. This organization consisting of the AFL-CIO related American Federation of Teachers and the NEA would represent a three-million-member lobbying force camped on C ngress' doorstep unless dramatic alterations are made in the nation's tax structure. One also cannot discount the possibility of teachers groups at the elementary-secondary level merging more rapidly with their counterparts in higher education and with other public groups. Teachers groups of course also have become more aggressive in state capitols and also have played more forceful roles on college and university campuses in the 1970's, as the AFT and NEA did in the public schools in the decade of the 1960's. Teacher organizations with their large grassroots membership and ample resources will be increasingly active and influential participants in elections at all governmental levels as continuing retrenchment, a shrinking support base, and declining enrollments make their memberships even more vulnerable and apprehensive and thus more receptive to political action as a necessary means of protecting their interests.

If at least a modicum of credence is to be placed in the adage that "he who pays the piper calls the tune," it is apparent that a necessary corollary to increases in state financing of education would be the need to strengthen state education departments to assume new and greatly enlarged responsibilities. Until very recently many, if not most, state educational agencies have been relatively ineffectual and understaffed. Contrary to the views of many, federal programs have not weakened state education departments but have provided them with a large percentage of whatever staff they may possess.

It must be stressed that power in our federal system is not a zero sum game, where, for example, if the federal level gains authority the states must necessarily lose authority. Indeed, the history of federal grants-in-aid indicates that state authority grows as the result of this finding. Our three-level governmental system, to cite Morton Grodzins metaphor, resembles a "marble" or rainbow cake and not the separate sections of a layer cake. Functions, in other words, are not discrete. They are shared or mixed as each governmental level influences and interacts with the other levels. It is important to note, however, that although federal programs certainly have expanded the administrative functions of the states, the national government certainly has been setting the agenda on many policy questions.

Thus far, our focus has largely been on the finance issue. What, however, are some of the other issues which underlie the escalating political visibility and vulnerability of education? Within the past decade or so a cluster of controversial social, economic and political issues have cascaded upon public education. These issues often extend beyond traditional public school concerns, and school officials have been confronted with new sets of complex problems without the necessary resources with which to cope with them.

In more tranquil times, educational officials generally could concern themselves with issues that impinged rather directly upon the public schools themselves. These problems, difficult as some of them might have been, were more immediately within the ken of school officials. School officials, in other words, who managed with a modicum of success the four "B's" namely bonds, budgets, buses, and buildings, often could survive and even flourish noncontroversially in positions of educational leadership.

Times have changed, however, and a new welter of problems confront public education. These problems which encompass society at large have sucked the public schools into the controversial vortex of American politics at every governmental level. Stephen K. Bailey, a former Regent in New York State and now on the faculty at the Harvard Graduate School of Education, relettered in a very creative way the aforementioned traditional four "B's." Bailey clusters today's major educational issues around:

> four "R's': race, resources, relationships and rule, or if some people prefer the letter "C": color, coffers, coordination, and control, or even "P": prejudice, pocketbooks, partnerships, and power.

Bailey's four "R's" provide very useful handles for one presenting some specific illustrations of the difficult and controversial issues that so recently have placed public education in the frontlines of American politics.

The saliency of the first "R", "race", as an issue which permeates the body politic is apparent. The nation's seemingly intractable civil rights concerns have been focused largely upon schools as we discussed earlier. Educational officials at the local, state and federal levels continue to wrestle with this most difficult and volatile of all domestic issues. Indeed, you will be grappling with the complex ramifications of these issues in your deliberations throughout the day. Officials of the Department of Health, Education, and Welfare have been embroiled in persistent conflict with school districts over efforts to desegregate their students and staffs.

As we have discussed, the second of Bailey's four "R's", "resources", likewise is pulling educators more directly into the general political arena. The politics of school finance is the major issue in scores of states and local communities as educational officials strive to survive within an archaic financial structure.

The dramatic visibility at the federal level of the politically sensitive civil rights issue is replicated, of course, at the state and local levels. Within the past decade or so, throughout the land state and local political and educational officials have been involved in this controversial issue; an issue with ramifications that obviously have extended far beyond the traditional purview of school systems. Perhaps more than any other problem, the civil rights issue has politicized education and broken down the traditional separation of school officials from the mainstream of general government at all levels. Even the most parochial and apolitical educational officials have come to recognize that the schools unilaterally cannot resolve American's deeply embedded problems of racial separatism and inequality of educational opportunity.

Many students of urban problems, for example, believe that equality of educational opportunity can best be achieved for minority groups through cooperative multi-agency approaches to the inter-related problems of education, housing, and jobs. Such approaches are predicated upon the assumption that the schools must work much more closely with other agencies within the mainstream of the body politic at all governmental levels. Recent developments in New York City reflect this "integration of school government" philosophy which remains anathema to most professional educators.

The third "R" cited by Bailey, "relationships", also is accelerating the politicalization of education. Despite continued widespread beliefs in shibboleths

pertaining to local autonomy in education, school districts, as mentioned earlier, are less and less isolated and insulated from a growing number of federal, state, local and private partners in the educational enterprise. Local school districts are no longer relatively independent islands in establishing educational policy. The base of educational decision-making has expanded tremendously in recent years and school officials have been compelled either to solidify or to create de novo a wide range of broadened relationships.

Recently enacted federal programs have generated, for example, new dimensions of communication and coordination between local and school officials and educators working in state and federal agencies. The Elementary and Secondary Education Act (ESEA) of 1965,in particular, has, contrary to some popular assumptions, markedly strengthened the role and influence of state education departments. Much of the recent strengthening of state educational agencies is attributable to responsibilities imposed upon them by federal legislation enacted within the past decade or so. This federal legislation, as well as the growing need for additional state aid alluded to earlier, has compelled many school districts which once ignored understaffed and ineffectual state agencies to turn to the latter for approval of proposals and for assistance in meeting their growing problems.

In addition to the aforementioned necessity for more vertical coordination with state and federal agencies, local school districts have been forced in recent years to expand contacts horizontally. A variety of new programs require district officials to consult with representatives of local groups and communities on a whole range of programs that formerly were decided unilaterally by educators. Title I of ESEA, for example, mandated that public school officials consult with local community groups in the development of programs,

for the disadvantaged. Tutoring, preschool, and vocational training programs, traditionally administered by professional educators, have been operated by Office of Economic Opportunity (OEO) funded agencies or private corporations. Fledgling and largely abortive model cities projects, operated by the federal Department of Housing and Urban Development, required educators to plan cooperatively with other agencies efforts to ameliorate housing, employment, and health conditions in depressed target neighborhoods. Such programs have drawn the schools into the center of urban politics and frequently have projected educational officials into the forefront of community strife.

Other examples can be cited of groups impinging into areas that once were the professional educator's almost exclusive domain. Various titles of ESEA, for example, encouraged school systems to cultivate relationships with nonpublic schools, universities, libraries, museums, and a wide range of social, cultural, and educational institutions.

The paramount result of this broadened participation in public education is that the schools are no longer the closed systems they once were. This expanded involvement means that the schools are now infinitely more vulnerable to community pressures and are less able to stand effectively behind the legend of separation of politics and education.

Last but certainly not least in the Bailey four "R's" is "rule". What is changing in education's authority structure that apparently is making conflict endemic to so many school systems? Why are school board members and administrators in hundreds of communities increasingly in constant strife? What has recently happened to have so many basic questions raised about the structure of an educational system that has operated relatively harmoniously until recent years?

As has already been indicated, new and diverse forces are now involved in influencing educational policy. Many outside groups composed of nonprofessional educators are now seeking and obtaining part of the public school "action." In addition to these external factors, traditional authority structures within school districts have been undermined. As districts have grown larger and educational issues have become more complex, lay school board members have become increasingly dependent upon their professional staffs for information and recommendations. Rather than being the actual determinors of school policy, boards of education at the local and state level frequently serve as agencies of legitimation for decisions made by professional staffs.

The growing influence of teacher organizations is certainly a major element in much of the contemporary conflict engulfing public education. Aggressive parent groups, particularly in the large urban centers, also are questioning the traditional structure of public education. The movement to decentralize big city school systems, for example, was a national phenomenon. In the recent past, protests by secondary school students also have raised dramatically basic questions about the organization and effectiveness of American education.

In this age, most of our traditional institutions are being questioned. Therefore, it is not surprising that schools are constantly under critical analysis and are so vulnerable to attack. In this environment of institutional reassessment and retrenchment, it can be predicted with some confidence that education at all levels will be increasingly controversial and politicized.

What, then, are the implications of these various political forces for local, state and federal educational decision-making? What of the future? Is the gravitational pull of authority to Washington, D.C. irreversible? Can the states begin to assume policy initiatives as the linchpins of a three-level governmental system and not be mere administrative conduits for national programs? Is it reasonable to expect relationships in the federal system ever

to conform to Terry Sanford's idealization:

> "The national government is positioned to look at problems and programs in broad, general, aggregate terms of national policy and purposes. Local communities see the world in narrow, particular, individual terms, and should. This is their beauty. The states, as regions--territorial entities--are the means by which these two points of view can be brought together in the service of the citizens."

The growing centralization of power at the national level is of concern to many Americans regardless of political persuasion. Some shared the late Senator Dirksen's concern that the continued attrition of the states soon would bring the time when "the only people interested in state boundaries will be Rand McNally." Even those who support the rapid expansion of federal social legislation and feel that it is too late to reform the states, fear the dangers of the "administrative monstrosity" which results from centralized bureaucracies operating programs affecting millions of citizens. What, then, is the solution, in a pluralistic society, to the current crisis of federalism?

There are those who have advocated replacing the outmoded states with regional authorities. The states, however, cannot be expected to disappear. For better or worse, they are too much a part of the "warp and woof of our national political fabric." Reports of the demise of the states, have proved to be premature.

Since one must assume that the states are here to stay, their renaissance and revitalization becomes a national necessity. With the purported interest of the Carter Administration in the concept of revenue sharing and decemtralizing the distribution of federal revenue, the states now may have another opportunity to become more assertive and substantive participants in the federal system. Indeed, in recent years there is encouraging evidence that the states have become more responsive and stronger. A number of states, for example,

have taken leadership in school finance reform after the Supreme Court's decision in the Rodriguez case which thwarted at least temporarily, federal initiative in this policy area.

The decade of the 1980's may well see either a dynamic renaissance of the states, or if they are not able to fulfill their responsibilities quickly enough, a total and perhaps irrevocable centralization of authority in the federal government. American education will obviously be greatly influenced by the developments which will occur.

CASE STUDY: NEW YORK CITY AND THE OFFICE OF CIVIL RIGHTS

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Introduction

Norman Redlich
Dean, New York University Law School

I thought that it might be useful this morning, before we discuss the question of the impact of Office of Civil Rights rulings on local policy making and education, to give you a broad constitutional framework within which these discussions are going to take place. This involves a geographic tour of the United States in order to trace what has happened in the area of racial desegregation.

We started in the deep south and in the near south with the decision in Brown in 1954 and the second Brown case in 1955 in which the Supreme Court said that state-imposed segregated school systems violated the equal protection clause of the 14th Amendment. The states were ordered, as you know, to dismantle those systems with all deliberate speed. And it turned out to be more deliberation than speed. Throughout the South and the near south where dual school systems existed by law, various techniques were used by school boards to prevent the full implementation of the Brown decision. Finally, in a Virginia case in 1968, the Supreme Court held that where there had been a dual school system, the mere dismantling of the dual school system was not enough. What was required in order to meet the constitutional mandate was the elimination of segregation and the creation of an integrated school system. Of course, that decision involved a district (New Kent County, Virginia) where there had been a state-mandated dual school system.

A similar dual system had existed in our next constitutional scene, Charlotte, North Carolina, where, although the dual system had long since been eliminated legally, in parts of that school system the effects of a segregated system remained. The Court held that where there had been a legally imposed de jure segregated system of public education, the federal courts could eliminate the effects of that segregated system by such techniques as the redrawing of lines, location of schools, pairing of schools, and, significantly, busing. The Court indicated that where segregated schools still existed in a city where there had been a de jure segregated system, in effect the burden was on the school board to demonstrate that the continued segregation was the result of independent factors and not the result of the original segregated school system. And that case, the Swann case, marked a significant turning point because by 1971, the city of Charlotte, North Carolina was really not very different in all outward aspects from other cities, particularly in the North. While it was true that Charlotte once had a legally segregated school system, that system had been dismantled. While the effects may have remained, the causal link between the original segregation and the present effects was not as clear as in smaller communities.

From Charlotte, the scene shifted to Denver, where for the first time the Court dealt with a northern city where there had never been a de jure system of state-mandated segregation, but where the local board had made certain decisions which would make it very difficult for the Court to draw distinctions between Charlotte and Denver. Indeed the court did not.

The Court, in Keyes, held that where any substantial part of a school system had been the product of intentional segregation, even if not a legally mandated dual school system, but where there had been intentional segregation by the school board in any significant part. then the court was free to impose the same types of remedies that had been authorized in Swann, the Charlotte case. Once again the burden would be upon the school board to demonstrate that the continued segregation was the result of independent factors and not the result of the intentional segregation. One had, in effect, a doctrine of original sin: once there was some intentional de jure segregation within any substantial part of the system, then the courts were free to impose the same types of remedies as if one had had a legally mandated district-wide segregation system. And Keyes, of course, marked the broadest point of the Court's legal effort to fulfill the mandate of the Brown decision. The impact of the Keyes decision was one which would soon be felt in cities throughout the country.

It is important to note, however, that at no time did the Supreme Court ever abandon the notion that there had to be some aspect of de jure segregation, some aspect of intentional segregation by a government body. Since the Keyes case, there have been several limitations on the full impact of that decision. First, there has been a geographic limitation. The Court's remedial powers stop at the boundaries of the political entity which is responsible for the segregation so that an attempt to impose interdistrict remedies in Detroit (Milliken vs. Bradley) was held to be beyond the scope of the constitutional harm. There had to be some aspect of intentional segregation on the part of

the outlying area in order to trigger that remedy. A second limitation has been a temporal limitation. In the Pasadena case, the Supreme Court held that at some point the constitutional wrong may be righted and what happens thereafter, if it is the result of the factors having nothing to do with the original constitutional wrong, is beyond the remedies of the federal district courts. And finally, during its 1977-1978 term, the Court emphasized the necessity of linking the remedy to the wrong. That is, if there was to be a district-wide busing remedy, there had to be a demonstration that this remedy was needed to cure a harm which could be shown to flow from the original act of intentional segregation on the part of the school board.

So the Court has never adopted the concept that the existence of segregation is something which triggers remedies. Quite the contrary, the Court has always tried to link the remedy to some type of showing that a government has intentionally brought about the segregated school system or any part thereof.

Thus far I have described the constitutional framework. Rembember, however, courts only decide cases. They correct constitutional wrongs. They are not the instruments to make general nationwide policy with regard to integration and, therefore, many issues have been left unresolved. I hope some will be discussed this morning.

Such questions as what happens with specialized schools, such questions as teacher assignments, the principal question of whether our goal should be a fully-integrated school system or whether it should be limited to remedying constitutional violations -- these are issues which courts may well not be able to deal with in the course of deciding cases. These areas of policy raise serious questions for school boards and, of course, the federal and state governments.

CASE STUDY: NEW YORK CITY AND THE OFFICE OF CIVIL RIGHTS

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Because of present litigation involving the New York City Board of Education and the United States Department of Health, Education and Welfare, neither the representatives of HEW nor those of the Office of Civil Rights, would offer a specific statement concerning the New York City schools. Mr. David Tatel, Director of the Office of Civil Rights, did, however, agree to submit for publication a legal brief, excerpts of which are here presented. The brief was prepared by the United States Attorney, Eastern District of New York on behalf of Joseph A. Califano, Jr. Secretary, United States Department of Health, Education and Welfare, and David Tatel, Director of the Office of Civil Rights, United States Department of Health, Education and Welfare.

Preliminary Statement

The Board of Education of the City School District of the City of New York ("The Central Board") and the other named appellants have appealed from an order of the district court (Weinstein J.) entered April 18, 1978 affirming the denial by the Department of Health, Education and Welfare ("HEW") of the Central Board's application for a basic grant under Emergency School Aid Act ("ESAA"), for the 1977-78 school year. The application was rejected because the Central Board did not establish its eligibility as a result of its having had and maintained in effect after June 23, 1972, a practice, policy or procedure which resulted in the assignment of faculty and supervisors to its schools in such a manner as to identify one or more of such schools as intended for students of a particular race or national origin.

Statement of Facts

A. The ESAA Statutory Scheme

The Emergency School Aid Act of 1972 provides an annual basis

special financial assistance to local educational agencies and other eligible organizations to achieve three basic statutory objectives.

Each year that an application for ESAA assistance is submitted, the application is evaluated and the eligibility of the applicant is reviewed. It is the burden of the applicant to establish its eligibility for the aid. ESAA funds are awarded to qualified applicants in the order in which their applications are ranked as satisfying specified guidelines and criteria. Since the amount appropriated by Congress for the ESAA program is less than the total amount of the grants sought by the applicants, the ESAA program is designed to encourage the submission of applications which meet ESAA objectives to the greatest extent possible and to fund programs which will best achieve these purposes. To this extent, the ESSA program is competitive in nature.

In order for an applicant to be eligible for such aid, it must, inter alia, first submit a timely application, which on its face both meets certain minimum technical-qualitative criteria and satisfies ESAA objectives. It is upon these factors that the application is ranked. Second, it must otherwise establish that it has not engaged in any of the four categories of disqualifying acts, practices, policies or procedures specified in the statute and regulations.

The regulation promulgated under ESAA pertinent to this case provides, as follows:

> "No educational agency shall be eligible for assistance under the Act, if after June 23, 1972, it has had or maintained in effect any other practice, policy, or procedure which results in discrimination on the basis of race, color, or national origin in the recruiting, hiring, promotion, payment, demotion, dismissal, or assignment of any of its

employees (or any other personnel for which such agency has any administrative responsibility), including the assignment of full-time classroom teachers to the schools of such agency in such a manner as to identify any of such schools as intended for students of a particular race, or national origin."

Prior to a determination by the Secretary that the applicant is not ineligible by reason of its having engaged in these disqualifying acts, practices, policies or procedures, the Assistant Secretary for Education may not approve the application for ESAA assistance. Where it is determined that an applicant is not eligible for ESAA funds, the applicant is notified in writing of the grounds underlying the agency's conclusion that it has not established its eligibility and is afforded an opportunity to meet informally to show why HEW's determination is wrong.

B. The initial Denial of the Central Board's ESAA Application

The Central Board timely filed three applications for fiscal year 1977 assistance under the Act. Only one of those applications, the basic grant application, was able to survive program merit competition and obtain a sufficient rank order standing to be considered for funding. By letter dated July 1, 1977, the Central Board was notified by HEW that its basic grant application could not be funded because it did not establish its eligibility as a result of "the assignment of full-time classroom teachers to (its) schools ... in such a manner as to identify (one or more) of such schools as intended for students of a particular race, or national origin."

The July 1, 1977 letter incorporated by reference the November 9, 1976 letter of the office for Civil Rights of HEW to Chancellor Anker advising, inter alia, that it found that teachers, principals and assistant principals were assigned "in a manner that has created, confirmed and reinforced the racial and/or ethnic identifiability of the system's schools ... The matters raised in the November 9, 1976 OCR letter were the subject of a Memorandum of Understanding between the Central Board and OCR, dated September 7, 1977, wherein the Central Board agreed, inter alia, to assign or reassign teachers to comply with federal standards by 1980. Until the disqualifying disparity in personnel assignments is corrected and it obtains a waiver, the Central Board will be unable to obtain the requisite waiver entitling it to be eligible to receive ESAA funds again.

At the informal meeting with HEW, the Central Board did not contest the accuracy or sufficiency of the Government's data and statistics, but rather presented explanations which were found to be insufficient to justify in all cases the disparities in the assignment of school personnel. By letter September 16, 1977, the Central Board was informed by HEW that the prior determination of ineligibility would not be revoked.

C. The District Court Proceedings Underlying Its Order of Remand

On September 27, 1977, the Central Board, the Chancellor, CSB 11 and various other local community school boards filed a complaint challenging the denial of ESAA funds. The Central Board again did not challenge the accuracy or sufficiency of the Government's statistics nor did it contest that the schools identified were in fact racially identifiable as a result of teacher assignments. The position of the Central Board was rather that it

had not intentionally discriminated in the assignment of teachers, principals and assistant principals because the assignments resulted from the state education law, requirements of collective bargaining agreements, demographic changes and other allegedly "neutral" factors.

On October 31, 1977, the district court, upon review of the administrative record and after a hearing, denied the Central Board's motion for summary judgment and granted defendants' cross-motion for summary judgment affirming the denial of ESAA funds, stating in pertinent part as follows:

> "...In this respect, considering the high school statistics, the State statutes, the United Federation of Teachers agreements, the wishes of individual Black principals, the desires of the individual Parent-Teacher Associations, community school boards and Black and White communities, the Administrator could find a practice, policy or procedure after June 23, 1972, resulting in the identification of schools as intended for students of a particular race, color or national origin through the assignment of teachers to those schools.
>
> "Accordingly, with the greatest reluctance because it is the children of the schools who will suffer from this decision of the Administrator, the Court grants the Government's motion for summary judgment."

On the Central Board's motion for reargument, the district court by "Memorandum and Order," entered November 18, 1978 implicitly vacated its prior decision and remanded the matter to HEW for "further consideration" in light of the standards the district court was imposing. These standards required the Office of Education not only to apply the applicable regulations that a disqualifying condition existed but further to determine if the disqualifying condition resulted from unconstitutional discrimination by the Central Board.

E. The Decision on Remand and the District Court's Affirmance

In accordance with the district court's decision remanding for further

consideration, an informal meeting was held on January 5, 1978, to afford the Central Board another opportunity to establish its eligibility. Upon consideration of the Central Board's oral and written submissions, the following determinations were made by HEW in its letter dated March 22, 1978:

> "We hereby determine, as required by the court, that on and before June 23, 1972, the City School District of the City of New York discriminated on a racial basis in the assignment of teachers and maintained an illegally segregated system in violation of the Fourteenth Amendment to the United States Constitution, Title VI of the Civil Rights Acts of 1964, and the requirements of the ESAA. We also determine that after June 23, 1972, the district took no effective steps to desegregate the system, which it had illegally segregated and maintained a system of illegal treatment of teachers through discriminatory practices and assignments which were segregative in intent, design, or foreseeable effect. The district has been given an opportunity to rebut the statistical prima facie case of discrimination, but its explanations are not persuasive.
>
> "We have also kept before us the following principle from Judge Weinstein's opinion:
>
> > Nothing in the Constitution or ESAA's statute, legislative history, or administrative regulation justifies granting funds on the ground that a discriminatory practice has been beyond the local school authority's ability to control. This purported defense of the Central Board, though poignant in its demonstration of lack of personal blameworthiness, may be unconvincing to H.E.W. The fact that the discriminatory patterns which resulted in correlation of teacher and student assignment by race may have been exacerbated by state statutes and policies is only relevant if those factors can be shown to be racially neutral. The Central Board is chargeable with discrimination caused by state statutes. H.E.W. could find that the statistical disparities are so grossly disproportionate to what would be expected in a racially neutral system that they represented a practice of discrimination based upon color or national origin in the assignment of teachers.
>
> * * * *
>
> "The racial assignment of faculty in your district is strikingly illustrated by the absence of minority

> teachers at certain high schools serving predominantly non-minority student bodies. The placement of teachers at the high schools is strictly under the control of the Central Board. Even if we were to concede that racial concentrations may sometimes be acceptable in small, special purpose schools, they were not adequately explained at the January meeting or otherwise.
>
> "Neither was a response provided giving the effective steps the district has taken to desegregate the faculties of its schools. No evidence has been submitted to show the patterns of racial assignment of teachers have changed in the current year substantially from that in 1975-76 or previously. A request by the HEW counsel present at the January 5, 1978, meeting for data showing the racial patterns of teacher assignment in 1969 and earlier for comparison was not met by the district. Nor was current data provided to demonstrate whether these patterns have been corrected."

Furthermore, the reasons presented by the Central Board to explain the conceded discriminatory assignment of teachers were again found by HEW not to be sufficient to justify the discrimination factually or legally.

Upon review of the administrative record, the submissions by the Central Board, and after argument on April 17, 1978, the district court affirmed the findings and conclusions of HEW as supported by substantial evidence and entered its order granting judgment in favor of the defendants on April 18, 1978.

ARGUMENT

POINT I

A. HEW's application of a disparate impact or effects standard is consistent with ESAA and is a proper standard.

The Central Board did not contest that the faculty of the schools identified were either substantially disproportionately below or above the mean for minority teachers, nor did they deny that these schools were statistically racially identifiable as a result of the significant disparities in staff assignments. The Central Board, however, argued that the statute and regulation required HEW to establish that the disparities resulted from purposeful or intentional discrimination. The Government disagrees.

The Emergency School Aid Act of 1972 provides on an annual basis special

financial assistance to achieve three objectives:

> "... (1) to meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools;
>
> (2) to encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students; and
>
> (3) to aid school children in overcoming the educational disadvantages of minority group isolation."

Certain practices or conditions or acts were deemed so inconsistent with these objectives that if they existed, the applicant would be ineligible to receive ESAA funds until not only the policies and practices causing or giving rise to the disqualification ceased to exist, but also the effects of these policies and practices. This is what the Court of Appeals held in Kelsey v. Weinbeyer.

> "We conclude that racially identifiable public school faculties as well as policies and practices of racially discriminatory teacher assignments must have 'ceased to exist' prior to any administrative waiver of ineligibility for benefit under the Act. ..."

As is apparent from Kelsey one of the grounds for disqualification is " . . . discrimination based upon race, color, or national origin in the . . . assignment of employees of the (local educational) agency . . . " that occurred after June 23, 1972. That Congress intended thereby to include not only purposeful discrimination but discrimination evidenced by an unjustified disparity is clear for the following reasons. First, the statute expressly requires that all ESAA "guidelines and criteria . . . be applied uniformly . . . without regard to the origin or cause of such segregation." For the purposes of ESAA, it is immaterial if racial group isolation results from purposeful discrimination or not, if it is not educationally justifiable.

Second, the ESSA statutory proscription barring employment discrimination includes as a basis for disqualification discriminatory acts and practices which are violative of statutory civil rights provisions such as Title VII of the Civil Rights Act of 1964 as well as those which are proscribed by the Consitution. Under Teamsters v. United States, McDonnell Douglas Corp. v. Green and Griggs v. Duke Power Co., proof of discriminatory motive is not required to establish discrimination under the disparate impact theory. It would of course, be inconsistent with the objectives of ESAA to find an applicant eligible merely because the form of employment discrimination is violative of only Title VII and not the Constitution. That such a result is unreasonable is also clear from the fact that ESAA expressly requires the prohibitions of Title VI against exclusion of, denial of equal benefits to, or discrimination against any person on the grounds of race, color, or national origin to be also applied uniformly and without regard to the origin or source of the violation.

Finally, the pertinent regulation clearly employs an effects or disparate impact standard as a stated condition of eligibility for ESAA funds. The regulation must be adhered to by the Court if it is consistent with the statutory purposes of ESAA, Lau v. Nichols, Mourning v. Family Publications Service, Inc., Thorpe v. Housing Authority of the City of Durham. As such the regulation is entitled to great weight, Trafficante v. Metropolitan Life Ins. Co.; Griggs v. Duke Power, supra, Udall v. Tallman, and may not be disregarded by the Court, unless it is otherwise invalid.

B. The Central board failed to present a sufficient justification for the racial disparities.

Since the Central Board did not dispute the disparate impact of teacher assignments and did not contest the resultant racial identifiability of the schools, the question then is whether HEW's determination that the Central

Board did not adequately justify the disparities as business (here - educational) necessity was arbitrary, capricious or unreasonable. HEW's decision was properly upheld by the district court for the following reasons: First, justifications for the existence of a disqualifying condition cannot rest on local factors, such as local law, local contracts, or local practices because Congress required that ESAA

> "guidelines and criteria . . . be applied uniformly in all regions of the United States in dealing with conditions of segregation by use in schools of educational agencies of any State without regard to the origin or cause of such segregation."

Here, of course, the particular requirements of local law, the provision of local contracts and the desires of local non-minority personnel were the primary explanations presented.

But even these factors did not adequately account for the assignments made and, of course, did not constitute legally sufficient justifications under ESSA. Since the alternative hiring method was not applicable for high school teachers, the only justification presented for the substantial disparities in the predominantly ten non-minority academic high schools listed above were restrictions on the transfer of teachers contained in the collective bargaining agreement with the teachers' union, the desirability of teaching assignments to these schools, the unwillingness of many non-minority teachers to teach in predominantly minority schools, and the unequal distribution of licenses in specific areas. With respect to the latter, however, specific information was not provided even when it was requested. Furthermore, since this unequal distribution resulted from the very exams OCR determined to have had a racially significant disparate impact in its November 9, 1976 letter of findings, absent the validation of the exams reliance on the results of the exams, without more, did not constitute an acceptable justification.

The former three explanations were not only found to be legally insufficient but were never shown to provide even adequate factual justifications. For example, in the 1973-1974 school year, the total number of full time teachers in academic high schools increased by 643, of whom 108 were members of minority groups. In that same year the full time faculty of New Utrecht High School increased by 34, from 164 to 198. The number of full time minority faculty, however, remained the same - 1. At Abraham Lincoln High School the increase for full time faculty members was 15 but the number of minority members remained the same - also 1. At F.D. Roosevelt High School the total increase was 11, but the number of minority faculty members was also unchanged - 2. William E. Grady High School had an increase of 10 full time teachers, but the number of minority teachers decreased from 2 to 1. Similarly James Madison High School had an overall increase of 4 full time teachers but a decrease in the number of minority teachers from 4 to 2. In none of these instances did the Central Board demonstrate that minority teachers were unavailable for assignment to their schools.

POINT II

Assuming a constitutional standard of discrimination is applicable, the determination that the central board was ineligible must be affirmed because the central board did not show that the administrative determination was clearly erroneous and because the central board failed adequately to show that the assignments were not racially motivated or intended.

Assuming the correctness of appellants' position that a constitutional standard of intentional or purposeful discrimination must be applied to deny funds under ESAA, it is apparent that HEW's determination must still be affirmed. The responsibility for assigning teachers to schools rests squarely on the school district and is subject to its control. As the Court of Appeals stated in Kelly v. Guinn:

> " . . . Teacher assignment is so clearly subject to the complete control of school authorities, unfettered by such extrinsic factors as neighborhood residential composition or transportation problems, that the assignment of an overwhelming black faculty to black schools is strong evidence that racial considerations have been permitted to influence the determination of school policies and practices."

It is for this reason that in Swann v. Charlotte-Mechlenburg Board of Education, the Court observed that "existing policy and practice with regard to faculty [and] staff ... [are] among the most important indicia of a segregated system. ..." The Court then stated the applicable principle as follows:

> " . . . Independent of student assignment where it is possible to identify a 'white school' or a 'negro school' simply by reference to the racial composition of teachers and staff . . . a prima facia case of violation of substantive Constitutional rights under the Equal Protection Clause is shown." (emphasis in the original).

The first question then is whether the Government sufficiently established a prima facie case of intentional discrimination. The substantial racial disparities in teacher assignments that existed, equalling or exceeding two standard deviations in the ten high schools identified by HEW, are clearly sufficient to establish a prima facie showing that the assignments were not neutral but racially motivated. As the Court stated in Hazelwood School District v. United States, "[a]s a general rule for such large samples, if the difference between the expected value and the observed number is greater than two or three standard deviations, then the hypothesis that teachers were hired without regard to race would be suspect." Furthermore, since it cannot

be gainsaid that the racially disparate effects of teacher assignment policies and decisions were long known and forseeable, the prima facie case of intentional or purposeful discrimination is established. As this Court recently stated in Arthur v. Nyquist, " . . . foreseeable results created a presumption of segregative intent . . ." Furthermore, since the racial identifiability of the schools is not contested, it is evident that a prima facie showing that these schools are intended for students of a particular race or national origin has also been made.

The question then is whether the Central Board established that these disparities resulted from actions of the Central Board which were not only racially neutral under some alleged explanation but also not motivated by segregative intent. As the Court stated in Keyes v. School District No. 1, Denver, Colorado, "it is not enough, of course, for the school authorities to rely upon some allegedly logical, racially neutral explanation for their action. Their burden is to adduce proof sufficient to support a finding that segregative intent was not among the factors that motivated their actions." This Court more fully explained this burden in its recent decision in Arthur v. Nyquist:

> "In Hart, we steered a course between objective and subjective theories of segregative intent by holding that foreseeable consequences, while not specifically identifiable with intention, can provide evidence for its presence. Hence our approval of the Sixth Circuit's opinion in Oliver, which indicated that foreseeable results created a presumption of segregative intent which could be rebutted by a showing that state actions were consistent with racially neutral policies. Furthermore, we stressed that segregative intent could not only be inferred in the context of an examination of alternative policies available to state officials.
>
> "In adopting this approach, we focused not on the mental processes of a changing group of school board members, but rather on the actions taken by the board itself. When such actions have the natural, probable, and foreseeable result of increasing or perpetuating segregation, a presumption of segregative purpose is created.

> The burden of proof then shifts to defendant officials to show that the pattern of actions taken by those officials can be explained in a manner consistent with the absence of segregative intent. Put differently, once the burden of proof has shifted, school officials must be able to demonstrate that no reasonable alternative policy would have achieved the same permissible educational goals with less segregative effect. When such a showing cannot be made, it is entirely reasonable to infer that the officials acted with unlawful segregative intent."

The only educational policy suggested for the discriminatory assignments was the need to provide minority students with minority faculty role models. This justification has been rejected by the courts for the very reasons given by the district court in Arthur v. Nyquist:

> "It is thus plainly admitted that the Board has purposely followed a policy [the assignment of minority teachers and other school staff members to predominantly minority schools] that has segregated, and was intended to segregate, the teacher and administrative staffs in the Buffalo public schools. Whether the Board's excuse for this action to provide black role models for black students, is the real motivation behind the staffing according to race, is legally irrelevant. Whether desired by the majority or the minority, whether the motive be evil or benign, racial segregation in the public schools cannot withstand the proscriptions of the fourteenth amendment. Cooper v. Aaron, Morgan Vl Hennigan, Morgan v. Kerrigan.
>
> "Defendant Board of Education's theory, if carried to its logical conclusion, supports the complete separation of the races in public schools. One of the premises of Brown, and the many cases that have followed, is simply that segregation is harmful for both black and white children, and ultimately divisive and destructive for society. It is not contended by this court that minority role models are not important for minority students. Racial and ethnic pride has its value. But, in the constitutional scheme, a higher value in the hierarchy is integration. Integration, and the understanding it fosters, will provide both black and white role models for both black and white children.

The Central Board also suggests that the racial identifiability of their schools is the result of factors such as the operation of state law and collective bargaining agreements. The basic thrust of the landmark case of Brown v. Board of Education is that segregation mandated by state law is proscribed by the Fourteenth Amendment. Subsequent cases make clear that state law may not be interposed to frustrate a constitutional mandate.

Subsequent cases make clear that state law may not be interposed to frustrate a constitutional mandate. United States v. Indianola Municipal, United States v. Greenwood Municipal Separate School District, United States v. Board of Education of the City of Messamer. Similarly, collective bargaining provisions providing for choice of transfer by teachers with more seniority cannot justify the racial identifiability of a faculty, since teachers are agents of the school boards. Kelly v. Guinn, Smuck v. Hobson. The remaining explanations have also been rejected by the courts: that teacher assignments were made at the request of teachers and principals, Kelly v. Guinn; that black teachers have a commitment to the education of black students and black parents desire to have black teachers educate their children, Morgan v. Kerrigan; that school boards were forced to accede to requests from teachers to teach at particular schools, Reed v. Rhodes. These explanations are insufficient and have in fact been the basis for findings that the discrimination was intentional, whether compelled by state law, or inspired by benign motives.

Thus it cannot be concluded that either the explanations offered by the Central Board were either factually or legally adequate to rebut the statistical showing of identifiability or that the administrative decision that the Central Board did not establish its eligibility was clearly erroneous even under a constitutional standard.

CASE STUDY: NEW YORK CITY AND THE OFFICE OF CIVIL RIGHTS

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Presentations by Policy Makers:

Irving Anker
Chancellor, New York City School System

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and Welfare

Albert Shanker
President, American Federation of
Teachers

CASE STUDY: NEW YORK CITY AND THE OFFICE OF CIVIL RIGHTS

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Irving Anker
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Who runs the schools? The question is raised with increasing urgency as government and the courts assume an increasingly prominent role in policy-making and problem-solving in society, in the education process, and in the continuing quest for equity for all segments of the population. The Office for Civil Rights has the responsibility for enforcing the Civil Rights Law and for correcting discriminatory practices which have an invidious effect on any segment of the school population. Enforcement, however, must be even-handed as among school systems, urban and suburban. It must, moreover, be certain that its rulings are not counterproductive in that they create policy demands that accelerate the very problems that they are designed to address, i.e., the isolation of minority pupils in large urban school systems, where such problems have already assumed staggering dimensions.

It might be appropriate to begin this discussion with a brief excerpt from the Board of Education's response, dated November 22, 1977, to the Office for Civil Rights Letter of Allegations dated October 4, 1977. Our statement reads:

> Any response to the issues raised by the Office for Civil Rights must be prefaced with the assertion that the New York City Board of Education has been and continues to be unequivocally committed to the goals of integrated education for all children in the New York City system, in all of its programs, and in all of its facilities.

The New York City Board of Education has long assumed a leadership role in developing and supporting programs aimed at reducing minority group isolation and promoting integration in the public schools. The Board has demonstrated its commitment to integrated education in a range and variety of programs specifically

structured to discourage, eliminate, or at the very least, counter the effects of minority group isolated public schools. Included in such programs have been site selection, which means building in predominantly middle-class or fringe areas to encourage as broad a racial mix as possible in the school population; rezoning at regular intervals to minimize the effects of changing population patterns in the immediate communities, open enrollment, magnet schools, comprehensive high schools. Every device for promoting integration has been pursued to ensure that both the spirit and the letter of the Civil Rights Act of 1964 are scrupulously followed in New York City. It is clearly the responsibility of an agency whose function is education to live within the law, and beyond that, to demonstrate by example that color and race have no place in determining the quality of education available to a child in the New York City public school system.

There are no white "sanctuaries" in the New York City public education. Unfortunately, there are such sanctuaries in suburban areas which surround the large cities throughout the country. Such sanctuaries isolate minority children and encourage white and middle-class flight that defeats the very intent of the Civil Rights Laws and court decisions. There are few, if any, white children in the New York City public schools who do not at some time in the course of their public schooling attend classes with children of other races. Unfortunately, the same claim cannot be made for Black and Hispanic children in the New York City school system. The population distribution is now approximately 70 percent "minority", 30 percent "others" (and changing rapidly each year) with the 1978 census reflecting approximately 75 percent "minority" and 25 percent white in the lower grades--which is one of the starkest indications of why the potential for

further integration is almost non-existent beyond its present level, unless some obvious measures are invoked. The suburban areas which ring New York City, some of them a stone's throw from the city itself, remain inviolate, predominantly white, and immune from the regulations which govern the inner city. We do indeed have a dual system-- one for the city and one for the suburbs, each separate and eminently unequal. In Nassau and Suffolk counties, for instance, there are some 130 school districts, of which a handful, four or five, have substantial, in some cases, almost total, minority group populations. Each of these districts is located within minutes of separate school districts with a predominantly white enrollment, each district racially isolated, rigidly contained, and politically sanctioned. How can we justify the passion with which the Office for Civil Rights pursues the goal of "integration" in the cities, where the ratio of Black and Hispanics to White is now 70:30 (with the disparity growing) while ignoring the fact that the suburbs are governed by standards that permit, even encourage, racial patterns in public education that perpetuate separation because of arbitrarily drawn and just as arbitrarily maintained lines of demarcation? A school district, the reasoning goes, is a school district is a school district, whether it is New York City which sprawls across five counties, more than 300 square miles, encompasses 1000 schools, and serves more than a million children, or whether it is Wyandanch with fewer than 2500 students, less than 2 percent white, which lies within easy access to Lindenhurst, school population 11,000, 96 percent white, each a tiny independent school district. This curious anomaly exists in school districts all over the country, with patterns of Black and White, minority and "others" independent, contiguous, geographically related, socially and ethnically and legally, independent. In Philadelphia, the inner city has a minority school population that is well in

excess of 70 percent; Ridley and Interboro School Districts, which are contiguous suburbs have a minority population of less than 2 percent. In Washington, D.C., the minority population is now above 97 percent; the suburban minority population in the schools is approximately 9 percent. In Dallas with a minority population that is upwards of 60 percent, the contiguous suburb of Lancaster has a minority population of approximately 10 percent. Detroit, Cleveland, Los Angeles, the distribution remains relentlessly consistent.

The Office for Civil Rights has been pursuing a policy of selective enforcement which has had and continues to have serious implications for urban areas throughout the country, where the middle class, both minority and "others" is abandoning city living for the predictability of the nearby suburbs, leaving the inner city to those without choices, and those without power.

On November 9, 1976, the Board of Education of the City of New York received from the Office for Civil Rights a letter of allegations charging the New York City school system with non-compliance with both Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Among the allegations were the following:

1. Minority teachers have been denied full access to employment opportunities through the use of racially discriminatory selection and testing procedures and through the use of racially identifiable employment pools in a manner that discriminatorily restricted the placement of minority teachers;

2. Teachers, assistant principals, and principals had been assigned in a manner that created, confirmed and reinforced the racial and/or ethnic identifiability of the system's schools; and

3. Teachers with less experience, lower average salaries and fewer advanced degrees had been assigned to schools which have higher percentages of minority students.

4. Females had been denied equal access to positions as principals and assistant principals throughout the system.

5. A lower level of financial support for female athletic coaching programs had been provided, and

6. Female teachers had been deprived of seniority rights and other compensation through failure to eliminate the effects of past discriminatory leave policies.

Faced with the immediate loss of upwards of 1200 federally funded positions, as well as the ultimate loss of hundreds of millions of dollars in federal funds, New York moved promptly to avoid a protracted administrative contest to challenge the findings. Other cities confronted with similar problems were faced with prompt cut-off of federal funds. Massive staff dislocations resulting from mandatory involuntary transfers of Black and white teachers across wide geographical distances in cities like Chicago and Los Angeles compounded the problems for those cities without enhancing the educational process. In New York City, negotiations were conducted and concluded without sacrificing a single educational principle, and although the agreement has elicited reactions pro and con, we avoided costly, protracted, and damaging litigation, and beyond that, we were able in New York City, to maintain a system that would not compromise the standards of merit by which teacher selection has been governed.

The Office for Civil Rights was demanding immediate teacher transfers, almost identical staff integration for every school systemwide within two years; hiring on the basis of State Certification and the elimination of the Board of Examiners from the selection system. After ten months of assiduous negotiation, an agreement was reached with the Office for Civil Rights which resulted in the promulgation of an equal opportunity action program to improve the level of staff integration in

New York City, with minimum disruption to the ongoing education process. Although negotiated under duress, it avoided costly litigation, averted the loss of hundreds of millions of dollars in federal funds, and preserved the integrity of the educational system in New York City.

-There were no forced transfers.

-Full integration will take place over a period of three years through attrition and appropriate replacement of staff. Since non-minority staff in New York City has, for the most part, greater seniority and is by and large older than minority personnel, a gradual process of equalization will result.

-Qualifications and specialization will continue to be significant factors in assignments so that teachers who are trained in a particular discipline will be assigned to teach in that discipline instead of being subject to random assignment solely on the basis of race or ethnicity.

-The Board of Examiners has been retained, and New York City teachers will continue to be held to standards that will ensure a professional staff that meets the highest standards of merit and fitness in the State, and in the country. No teacher will be appointed to a New York City school who has not met city examination standards.

-A study of the "relevant" qualified labor pool "will be conducted to determine the availability of college graduates in education majors who are potential candidates for teaching positions in New York City." This figure, rather than the number of minority students, must become the governing factor in hiring.

The agreement preserves the basic principles to which the Board and the Chancellor are committed.

The second phase of the negotiations with the Office for Civil Rights devolve about issues raised in their letter of allegations, dated October 4, 1977, to which the Board responded on November 22, 1977, with a final segment dated January 18, 1978. Many of the allegations originally cited in an earlier letter were withdrawn after careful review and professional investigation by the present

Office for Civil Rights administrators. Among the earlier allegations, since withdrawn, were charges that the New York City vocational schools enrolled a disproportionate percentage of males in such courses as plumbing and automotive industries, and that proportionately fewer males were enrolled in nursing and cosmetology courses. The present administration in the Office for Civil Rights appears to be more keenly aware of cultural influences in our society which attract males to some courses of study, and females to another. There were additional allegations regarding our special admissions high schools, which in our judgment offer outstanding educational opportunities for students of all races, with special consideration given to minority students. Fourteen percent of the admissions to these schools consist of disadvantaged students who demonstrated potential but who do not meet the admissions standards. These students receive special summer preparation courses to ease their transition into the demanding regimen which have established our special admissions high schools as models of excellence nationwide.

Among the issues, still under discussion, which we hope are near resolution, the major one is the question of grouping children for instruction. In New York City, the question of grouping is an educational decision usually made on the school level. Some schools group children on a functional level: children reading above grade level are grouped separately from children who are beginning readers, and there are gradations in between. There are sound philosophical and education justifications for grouping by functional levels when it is not rigidly maintained, not total tracking, and when it strives to minimize racial imbalances.

The Office for Civil Rights argued that in an all minority school, the

practices of homogeneous groupi g might be acceptable; in an integrated school, the Office for Civil Rights contended that ability grouping (I prefer to call it functional level grouping) would be challenged if it resulted in ethnic imbalance in class registers. Where class sizes are large, and where the range of abilities within a class is broad, heterogeneous grouping may be an educationally unsound and pedagogically counterproductive procedure, which would result in a less than optimum learning situation for all the children involved. Our negotiators are recommending that integrated classes be organized but where the desirability of ability grouping can be documented as educationally sound, it should be permitted within stipulated limits.

The attorneys for the Office for Civil Rights suggest the following limits. I read from their own draft:

> Self-contained classes may be organized on the basis of stratified heterogeneous grouping.
>
> 1. To achieve this all students in a grade will be ranked using recognized, objective non-discriminatory criteria.
>
> 2. The ranking will be divided into four equal levels.
>
> 3. The first and third level will be pooled and the second and fourth will form another pool.
>
> 4. Individual classes will be formed from either one pool or the other.
>
> 5. The minority/non-minority population of each class must reflect that of the pool as a whole.

Unfortunately, even a sound legal solution may not always be consonant with sound education, and if educational excellence is not the ultimate goal, the very purpose of the law is thwarted. If, as professionals, we connive at what we believe to be an educational policy that does not advance the best interests of all the

children in the schools, we are betraying them as well as a principle.

The educational community has a professional obligation to resist coercive and manipulative pressures which sacrifice educational quality to a crusade for phantom social ends. According to a recent report in the New York Times (May 14, 1978) even the People's Republic of China, where alleged egalitarianism was the cornerstone of the cultural revolution, there is beginning to be some acknowledgment that even if everybody is equal, there may be some students whose needs are best served by grouping by functional levels. Despite concerns about a new elite, "China has begun to institute a new program of dividing school children into classes of fast, normal, and slow learners, " to quote from the Times article.

It is becoming increasingly clear, and increasingly alarming to the educational community, that unless OCR's zeal for rigid numbers integration can be meshed with the tenets of valid educational practices, the Office for Civil Rights have no discrimination or integration problems left to deal with in large cities because there will be no mixed constituency left. The cities will be left to those who have no options, no choices, and no exits.

Just a year ago, in May 1977, the Council of Large City School Superintendents asked me to draft, and subsequently they adopted, a resolution for submission to the Office for Civil Rights. I am attaching the full text to this paper for the record, but I will quote one brief excerpt because I think it embodies the essence of the problem that large urban school systems are facing everywhere in this country:

RESOLVED, That the Office for Civil Rights of the Department of Health, Education, and Welfare review its policy of selective enforcement which has fallen primarily and heavily on major urban areas where the poor and minority are already the victims of increased racial imbalance, and where the increasing isolation of the minority poor is negating any hope of integrated schooling for minority children.

The Council of the Large City School Superintendents has adopted the following resolution for submission to the Office for Civil Rights:

RESOLVED, That the Office for Civil Rights of the Department of Health, Education, and Welfare establish forthwith a policy of consulting with Superintendents and School Board Members of large cities regarding the content and format of all surveys, reports, and data-gathering instruments prior to dissemination to school districts throughout the country; and be it further

RESOLVED, That the Office for Civil Rights of the Department of Health, Education, and Welfare review its policy of selective enforcement which has fallen primarily and heavily on major urban areas where the poor and minority are already the victims of increased racial imbalance, and where the increasing isolation of the minority poor is negating any hope of integrated schooling for minority children.

E X P L A N A T I O N

Large city school systems throughout the nation are coping with major demographic changes caused by the steady movement of middle-income families out of the central cities and the movement of the poor, largely minority, into the central cities. The resulting racial imbalance has had a major impact on the delivery of all social services, particularly severe on public education. Professional educators recognize their responsibility to enforce the law and to root

out, wherever possible, any vestige of practice or policy which promotes discrimination, detrimental to society and to the educational process. We recognize that the Office for Civil Rights has an equal obligation to enforce the law, and to gather such data as will help to enforce compliance with the law. We call upon the Office for Civil Rights to ensure that its efforts to promote enforcement of the law are conducted in an evenhanded manner to avoid placing an intolerable financial and administrative burden on the major cities. Data collection has mushroomed into an oppressive financial encumbrance for major cities, ranging in costs from $75,000 to $2,000,000 in some cities. The Office for Civil Rights has a clear obligation to go beyond the collection of data, to address itself to the implications and possible remedies for the real problems of segregated cities and resegregated school systems. Compliance must be the goal not only for the inner city but for all cities and school districts, large or small, throughout the country.

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Inez Smith Reid
Deputy General Counsel (for Regulation)
U.S. Department of Health, Education
and Welfare

Were I once again living in New York City and a practicing professor of political science at Brooklyn College, or the CUNY Graduate Center, or at Barnard College, or at Columbia University, I could comment on the New York City case now pending before HEW's Office of Civil Rights. But, as many of you know, I have been the HEW Deputy General Counsel for Regulation Review for one year. It is this official position which makes it impossible for me to comment now on the New York City case. HEW and the City are still involved in critical and delicate negotiations and litigation.

The impossibility of comment on the New York City case, however, affords me the welcome opportunity to step back and approach the subject of civil rights enforcement and local educational policy in a more theoretical, less emotional way. While what I say may not be awfully new, it may enable us to reorient our thinking by placing the subject in an appropriate context. It also permits me to speak, not so much as a lawyer, but as a social theoretician, a social activist, and as an educator.

As I pondered what I would say, I made a deliberate decision to speak almost without explicit reference to sources, to scholarly articles and to court precedent. This may be a risk but it is a calculated risk since I assume that most of you here have read and reread material which I might cite. Furthermore, I believe my points can be made more sharply without resort to scholarly citations, or citations to court decisions. So I have limited my references to the wisdom of

Frederick Douglass.

I firmly believe that the topic: The Impact of Civil Rights Enforcement on Local Policy Making in Education cannot be tackled in a vacuum. Nor can the topic: The Impact of the Office of Civil Rights Rulings on Local Policy Making in Education. The question of civil rights enforcement in local educational systems must be analyzed, I believe, in a total context.

On August 27, 1868 Frederick Douglass stated: "Men change; principles are eternal." These are thought-provoking words: "men change; principles are eternal." They force me to step away from the immediate issue of the impact of civil rights enforcement on the formulation of local educational policy and to reflect on the general principles to which this nation, and the components of this nation, have struggled to adhere for so many years. These general principles, gleaned from classic political documents and major judicial decisions, include at least the following notions: equality, equal opportunity, justice, fairness, sense of decency, ordered liberty, freedom, dignity. These are principles which have endured, in print, in our society. They are the principles which the Lester Maddox's of this world, the Nazis in Skokie, and the Stone Throwers in Boston cannot change because they are eternal. "Men change; principles are eternal." These are the principles which must clearly be etched in our minds as we think about civil rights enforcement and education.

This nation has found it necessary to accord special protection to some of those who inhabit its streets - in order to make certain that general principles

take hold and permeate the society. Minorities, women, the aging, the handicapped all are entitled to some degree of special protection in our society, not solely because they demand it as a result of historical abuse, but because society through its representative institution (the Congress) and through its interpretive institution (the U.S. Supreme Court) determined that some degree of special protection is essential.

So we have general principles which are eternal, and persons who need special protection to make certain that they are given cover under the umbrella of these general, eternal principles. Men change. So principles which are eternal must be enforced.

But, can society enforce these general, eternal principles in a vacuum, without recognizing that at least three potential constraints may hamper enforcement although they should not serve as an excuse for non-enforcement: First, general personal fears and tensions. Second, economic limitations, and third, cultural limitations. It is important to say a brief word about each of these potential constraints.

FIRST, general personal fears and tensions. Not just in the realm of public education, but in other areas of American life, two personal fears and tensions stand out clearly in the decade of the seventies: 1) the fear of unemployment or lack of professional advancement, and the tension generated by that fear, and 2) the fear of injury to self, and the tension generated by that fear. Somehow these fears, especially in the area of public education,

are directly linked to the principles of equality, equal opportunity, and justice. Unemployment and under employment are not under control in this society, not while 35-40% of the Black teenagers in an urban area may be without jobs, or convinced that there is no hope of attaining employment; not while men and women with higher education degrees accept jobs not requiring their educational attainments. While minorities think about huge chunks of their members who are without jobs, or about to be without jobs, members of the wider, majority society who have jobs may be worried about the possibility of non-advancement, may be worried enough to be advocates of the sponge society so prevalent in the mid and late sixties: The Society for the Prevention of Negroes Getting Everything.

Nor is fear of injury to self under control in this society, especially in the field of public education - not when children and teenagers imbibe alcohol, smoke marijuana, or shoot heroin, or sniff cocaine and, as a result, engage in anti-social or deviant acts, not when a 13 year old youngster from what appeared to be a solid, nice middle class family could walk into a class, rifle in hand, and end the life of a teacher - all in a split second. So there is the constraint of personal fears which we may have to think about but not use as an excuse for non-enforcement of civil rights in the area of public education.

SECOND, economic limitations. All of us are painfully aware of the economic limitations which now grip our nation, threatening to take away the hope of economic salvation for us, and the rest of the world - limitations manifested

by an impending energy crisis, by the absence of new money for new projects and the tendency to think about concepts like cost-benefit and zero based budgeting or zero based planning. Limitations also manifested by decaying houses and apartments, decaying mom and pop stores and big businesses, decaying school buildings, decaying streets, decaying cities, demoralized people who no longer care to be a voluntary economic or human resource, who no longer hope to be a paid human resource. These economic limitations, too, may be directly linked to the principles of equality, equal opportunity, and justice. Admittedly, there is the potential constraint of economic limitations which we may have to think but not use as an excuse for non-enforcement of civil rights in the area of public education.

THIRD, cultural limitations. Many of us may not appreciate the cultural limitations which condition the success of a variety of public policies. These cultural limitations are manifested by a socio-political history bank: Jewish people will never forget nazism; Blacks will never forget slavery and the lynchings which beset their ancestors. Cultural limitations are also manifested by a language bank - whether the language bank of newly arriving Japanese in Hawaii, or the language bank of newly arriving Italians and Puerto Ricans in New York, or the language bank of newly arriving Haitians in Boston and New York, or the language bank of newly arriving Jews from Russia. Finally, cultural limitations may be manifested by the bank of tradition and custom, a bank broken only by the command of one clearly in authority. I recall so well, for example, the order of my high school principal that sports cheers, chants, and yells could no longer be made to the tune of Negro spirituals.

Integration would not permit it. But many cultural banks are not easily broken, emptied, and thrown away on command. They remain in tact and are carried everywhere, even into the halls of public educational institutions. And, incidentally, these cultural banks may be filled with particular cultural fears, fears that the right things won't be taught, fears that the right things or anything won't be learned. So we may have to think about the constraints of cultural limitations but not use them as an excuse for non-enforcement of civil rights in the area of public education.

So, we start out with general, eternal principles. Then we recognize that certain groups must be given special protection if they are to be shielded by the umbrella of general, eternal principles. And we recognize, also, some potential constraints about which we must think but not use as an excuse for non-enforcement of civil rights. And, finally, we must face the critical and difficult question - whose lot is it to enforce the general, eternal principles?

At the present moment, I believe that national leadership is required if the general, eternal principles which we have mentioned are to be enforced, and <u>unless</u> - and this is a significant "unless" - unless local agencies, officials, private citizens and organizations take the leadership in advocating, promoting, and implementing these general, eternal principles - even in the face of potential constraints which might threaten their successful implementation.

Even though I believe that national leadership is required if local leadership for the enforcement of these general, eternal principles is not

provided, I am painfully aware of the contemporary and perhaps justified feeling that there has been too much federal governmental intrusion into the affairs of the American people. I encounter this feeling almost daily in my regulatory work at HEW. And I am also aware that a federal agency cannot do the massive job of enforcing general, eternal principles alone. Ideally, what is required is a federal-state-local partnership which establishes a critical balance with respect to the need to assert national leadership, the ability of local leaders to implement general, eternal principles, and the need to perhaps accommodate, or at least understand, certain local peculiarities. If this kind of federal-state-local partnership emerges, then the impact of civil rights enforcement on local educational policy may be a positive one which achieves the principles of equality, equal opportunity, and justice without the backbiting, threatening disarray that can emanate from uncontrolled personal fears, from economic limitations, and from cultural misunderstandings.

I opened with the wisdom of Frederick Douglass. Let me also close with the wisdom of Frederick Douglass. In 1872, Frederick Douglass said:

> We want mixed schools not because our colored schools are inferior to white schools--not because colored instructors are inferior to white instructors, but because we want to do away with a system that exalts one class and debases another. . . . .
>
> Our idea of mixed schools comprehends the employment of colored as well as white teachers, and of neither unless they are competent. Anything less than this would be fostering the very caste distinctions of which we all complain. It is saying to the colored child you may learn and acquire an abundance of intelligence but you must never hope to know enough to be able to teach a primary school composed of white and colored children. We can point to ladies and gentlemen of our race who can as successfully pass a rigid examination as white applicants for schools can; and if Mr. Langston will accompany us to schools conducted as white schools and to schools conducted as Negro schools we will undertake to show him as much earnestness and

devotion on the part of teachers of colored schools as on the part of those of white schools. We look to mixed schools to teach that worth and ability are to be the criterion of manhood and not race and color.

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Albert Shanker
President, American Federation of Teachers

I'd like to spend a minute or two talking about the background of this issue. Those of us in the union, those in the Board of Education, and many other groups involved here such as parents and community groups, have for a very long time been aware that even when our school system was not largely black and Puerto Rican, we had schools that were segregated and schools in which the opportunities were not equal. About twenty years ago schools that were attended predominantly by minority children had a majority of substitute teachers. The statistics were reversed when you reached majority white schools.

Looking back, there have been many efforts in which we and others have been involved to try to bring about changes, both in terms of the distribution of student population in the system and in terms of our awareness of the fact that we have always had in our school system a very small number of minority group teachers. I suppose that the list of what has been tried could easily fill a small book and would certainly be impressive. They include all kinds of integration schemes, from the pairing of schools to rezoning to efforts to implement the Allen plan. There were various teacher recruitment efforts, including sending recruiters to Southern schools as well as to Puerto Rico. There were even funds made available for transportation and retraining of minority group teachers who had been dismissed as a result of the integration process within the South. There were coaching courses. There was a demand for open enrollment in the City University, which was in part a demand to create a larger pool of people available for teaching and other professional activities within

the school system.

Yet, now, after all these efforts and after this history, we know that as far as students are concerned, the system has become even more segregated. We recognize too that we have not suceeded; rather, we have moved backwards. As far as staff is concerned, some progress has been made, but it has been slow. We have moved from what was the figure for many, many years of about 8 or 9 percent minority staff to approximately 15 percent at the present time.

One other thing needs to be said before I move to the OCR activities, and that is in activities revolving around race issues, civil rights and integration, we have tended over the years to be complacent just before we become engaged in a series of rather dramatic confrontations where there is a need for some kind of rapid and symbolic victory. And whether it is the State Legislature or the City Board of Education or the City itself or in some cases the Federal government, there is very little effort to think out what the problem really is or to try to anticipate what the consequences will be. One of the upheavals we all remember goes back ten years when nineteen teachers received notes telling them that all kinds of things would happen with respect to achievement scores and with many other events.

Now, of course, the claims have disappeared. I might say that some of the fears, many of which I entertained, also turned out to have been exaggerated. Decentralization didn't turn out to be as explosive or volatile as many of us predicted, but neither did it produce any of the benefits expected. But instead of dwelling on that question, I would like to emphasize the point that we tend to grasp for quick answers on the basis of what is wanted at the

moment without thinking about them: the results are too often temporary political solutions which in many instances only exacerbate the problem.

I would like to spend just a minute or two talking about the famous Allen plan which at one time was to be the great solution to New York City school problems. You remember that the theory was that the high schools were much more integrated than elementary schools and therefore, if we were to restructure the school system on a different basis, we would be able to provide for greater integration earlier. In those days we had high schools that were on a three-year basis and we started moving to a four-year system. I recall going to a meeting of all the integrationist civil rights groups at the Community Church. After listening to the plan, it seemed rather obvious that the plan would not integrate but instead, would further segregate. I stood up and said: "Look, the reason that the high schools are more integrated is that there are fewer high schools, and since there are fewer high schools, each of them covers a larger geographic area. The larger the geographic area a school covers, the more integrated it's going to be. If you are going to take three-year high schools and say that they will now cover four years, since our buildings are now over-crowded, you are going to have to take some other buildings that are now used for junior high schools or other schools, or you will have to construct some, and you will have more high schools. You'll need enough high schools to take care of four years worth of students rather than three. If you have more high schools, each high school will cover a smaller geographic area, and therefore each high school will be more segregated rather than more integrated, etc. You can trace this down through each level of school."

When I finished, one of the members of the group -- it was a coalition -- stood up and attacked me. "It doesn't make any difference what this does," he said. "This is the one thing that we are pinning our hopes on right now, and if you shoot this down, we'll have nothing to believe in, nothing to strive for. You're really destroying hopes."

I submit that a good many of the arguments about particular solutions have been on this basis. I also think that OCR has been operating largely on this basis, and its impact, as I will point out in a few minutes, is likely to be the opposite of what one would expect OCR would want. I do not believe that OCR's actions will further either integration or the quality of education. I think that their program is merely a response to political pressures, and the reason it turned out to be more reasonable in New York City after we sat down with OCR is because in New York City there was far more political counterpressure against some of the asinine things they wanted to do than in almost any place else in the country, and they couldn't take the heat. If people in the rest of the country would stand up and do the same kind of objecting as the people in New York City do, OCR would either for once have to do something intelligent or else go out of business.

The first thing that ought to be pointed out is the way OCR came in here. The first thing they did was to move in to some hotel with beautiful multicolored charts. Then a copy of their report was dropped in my office--and one at the office of the Board of Education -- within minutes of their public presentation before the radio and television audience of the entire country.

Now when a government agency that's trying to bring about changes doesn't sit down and share with the various agencies the information that it has, doesn't make suggestions, doesn't give them an opportunity to do something--when the first place they go to is the TV cameras -- that smacks more of a politician running for office than an administrative agency of government trying to effectuate certain social changes.

Irving Anker has gone into some detail on the specific items of the OCR report and I should say that the report was modified. The first one issued made a mistake which is rather commonly made. You develop a statistical chart showing the percentage of minority group students in the public schools; if you can show that that is, say, 68% or 70%, you then show that the percentage of minority group teachers is only 10% or 15%. You obviously have this tremendous disparity between the percentage of minority students and the percentage of minority group teachers. And that, you charge, is enough to prove that the system discriminates. Now, I don't know what kind of logic is used on this; obviously it's rather faulty. It's quite clear that we do not choose teachers from the ranks of students; that we choose them from the ranks of adults, and that the adult population might not reflect this pupil population in the public schools. We also don't just recruit them from the ranks of adults --they have to be college graduates. and undoubtedly, because of previous discrimination and economic deprivation, the percentage of minority group college graduates within our society does not reflect the percentages of minority groups themselves. None of that was taken into account in OCR's first report.

I will not go through all the specifics, but I do want to urge you to go back to those reports. You will find that one conclusion is evident. That is that the word discrimination is not used in its customary sense -- I would say in its proper sense, because I think words have to mean what they mean or they don't mean very much. I believe discrimination indicates either a certain intent on the part of an agency or an individual to accomplish a certain purpose. There's a complete failure on the part of OCR to show that anyone in the union, the Board of Education or the City or State, sat down and developed a plan in such a way that there would be segregated schools or that there wouldn't be minority group teachers. By the way, that's not always true. In Boston there were records of school committee meetings in which board members openly said "Well, if we put the boundary here, those black students will be going to this school which we intend as a white school and therefore we won't put the boundary there. We'll put it here." There was clear evidence in Boston that the school committee had acted, had discussed, had made decisions in such a way as to preserve separation in their schools. Here in New York, not only was no such evidence of intent to discriminate found, but if one went through all of the list of programs that had been attempted, there was rather clear evidence that major efforts were made to do the very opposite without any pressure from federal agencies.

The second meaning of the word discrimination is that you have certain institutional procedures which inevitably result in the exclusion of minority groups. Here, of course, there is a crucial issue: whether these particular mechanisms, which may exclude one group of people or another, have any educational justification.

There is no doubt that given the history of past discrimination and given the kinds of education that minority groups have had within our society over the years, any examination which tests on whatever -- English, math, social studies, etc -- will most likely result in having larger numbers of whites pass the examination than minorities, although hopefully the disparity grows smaller and smaller. But, it seems to me, it is not enough to say, "Well, throw out the examination." Or by the way, you might say throw out any degrees, or any given level of education, because the very requirement that there be the completion of a certain amount of education will result in smaller numbers of minority groups being eligible for a given job.

Another question is: Are these qualifications relevant or irrelevant? Here OCR comes in with some legal doctrine from some court decisions which have tended to say that the burden of proof is on the employer, that if you don't employ the proper quota of minorities, whatever criteria you use, the burden of proof is on you.

I submit that it is not a very intelligent way of proceeding. I don't know that anyone can prove that a given level of education or a given score on an exam should make one a doctor or a lawyer or a teacher or a dentist or an architect or an engineer, and that below that cutoff point, a person should not be permitted to practice one of these fields.

But the fact that one is unable to reasonably defend a particular cutoff point doesn't mean that you throw out all cutoff points or that you abandon all standards. Maybe you should lean a little bit one way or a little another. Maybe it should depend on supply and demand. Maybe there should be weight given in terms of where one moves that point in order to accomplish a better balanced staff. I would support that view. But the notion that you just throw out

any of these requirements because they don't happen to suit the goal that you want at that moment is entirely wrong.

One interesting point about the OCR view of faculty integration is that if a school district like New York City has substantial numbers of minority group teachers, then those teachers must be moved around the school system so that they are represented in the same proportion in every school in the city. On the other hand, school districts next door which have absolutely no minority group people don't have to move them around at all, because there is no problem for OCR in terms of integrating a staff where there is no one to integrate.

I would like to move to the question of what the impact is of all this. In terms of moving students, we now have national experience, and the national experience is that there is such a thing as white flight. I refer you to Diane Ravitch's article in the current issue of The Public Interest. The evidence in almost all of our cities in the country is conclusive. People in our society do move in order to provide better schools for their children. And what they consider to be better schools is not only newer buildings or teachers with X qualifications or more textbooks and so forth. It is all of those things, but to a larger extent it is the question of whether the children sitting next to their children will provide positive or negative educational models for their children. Within our society, people move from one lily-white district to another lily-white district. The efforts of OCR and of court orders in this

* Ravitch, Diane, "The White Flight Controversy", The Public Interest, No. 51, Spring, 1978, pp. 135-149.

country in this particular way have been counter-productive.

Second, the question of the movement of faculty creates political problems, not only in New York City, but throughout the country. All polls have shown that about 85% of the American people are rather violently opposed to the quota concept -- for our purposes, the notion that every single school and every single district has to have an exact percentage of minorities.

Third, there is the phenomenon we had in Denver first and then in Queens, where people lie about their race or ethnic origin. If they can have a certain advantage by saying that they are Puerto Rican, or if they can remain in a school by saying that they are black or whatever, this is what they do. And so, if you give people enough advantage by claiming to be in one group rather than another group, they will claim to be in that group. The obvious consequence of this is that the U.S. government or some other agency will have to start maintaining official records of race and will have to start developing, as they did in Los Angeles, some sort of new procedure where someone who claims to be of a given ethnic group will either have to prove it or be pushed out of that ethnic group. That would have serious consequences for civil rights, too.

I want to underline what Irving Anker said. One of the major consequences of the actions of OCR, not just in New York City but across the United States, is the possible destruction of public education through the proposed Packwood-Moynihan Bill in Congress and Proposition 13 in California. Missouri has already passed a tuition tax credit bill for private and parochial schools. And Michigan is now in the midst of a referendum in which the entire property tax would be abolished and every parent would be given a voucher to send his

or her child to any school in the state.

A good deal of the movement toward that has to do with actions of both the courts and OCR around Detroit and around other cities. The net result will be neither school integration nor compliance with civil rights laws. The net result is going to be to create a negative impact in the public schools -- turmoil, the feeling that the control is from a federal bureaucracy, that it is irrational and not for a purpose that most people accept. The feeling is and will be that the only way to get out from under these regulations, out from under OCR, is to get a tuition tax credit, to go to a private school or to a parochial school. Then you don't have any OCR to bother you. So I fear that the overall effect in New York City and in other cities of OCR-type activities will be a total segregation of schools, and, ultimately, an almost total destruction of public education, which will then be left for those who are either expelled from private schools or those who couldn't get into them in the first place.

Now, what does all this mean? Does it mean that we should abandon the struggle for civil rights? No, it does not. Because what led us to do some of these things in the first place was a correct instinct. There is something very repugnant about having schools that are all black, or all Puerto Rican, or all white, because we somehow feel that didn't happen all by itself. It was caused by racism within our society. By discrimination. Because of a great many things. We have a desire to undo those, and we know that when the effects of those things are undone, there won't be those separate schools, there will be a mix. We want to move in that direction, but we have discovered

that the particular methods that are being used do not lead us there.

The analogy I like to use is very much like the experience of New York City. A lot of people who are rather liberal, like myself, constantly said, "Spend more, spend more, spend more." Now we find that the result of having all these social services and expenditures has been to drive business out of the City and the State of New York. We've become unable to support these services. In a democratic society, if you push people too far, they will find ways to protect themselves. Those who can will get up and get out. This is what OCR has yet to learn. Integration is still a worthwhile goal. But it can't be achieved by tactics that drive away those you hope to integrate with and make our urban centers increasingly black and increasingly poor. To insist on means that make it impossible to achieve your goal is more than stupid. It may be downright malicious. And it makes those of us who continue to care about civil rights wonder about the real depths of OCR's commitment.

CASE STUDY: NEW YORK CITY AND THE OFFICE OF CIVIL RIGHTS

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Respondents:

Ernesto Loperena
Executive Director
ASPIRA of New York City, Inc.

Nathaniel R. Jones, Jr.
General Counsel
National Association for the Advancement
of Colored People

Larry M. Lavinsky
Chairman
National Civil Rights Committee
Anti-Defamation League of B'nai B'rith

Philip Kaplan
President
New York City School Boards Association

Blanche Lewis
Chairperson
City School News and Past President
United Parents Associations

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Ernesto Loperena
Executive Director
ASPIRA of New York City, Inc.

Today we have heard a number of different statements concerning the impact of the Office of Civil Rights on the school system. Chancellor Anker spoke about the problems the city's public schools face in fully integrating its system. He suggested that courts include neighboring counties in their orders to integrate. Mr. Shanker emphasized the importance of the merit system in the teacher selection process, and attacked the Office of Civil Rights for its essential disinterest in such a system. Dr. Smith Reid delivered a ringing speech on equality of opportunity and the need for national leadership.

I sincerely doubt whether anyone in this room would argue against equality of opportunity, yet in the New York City public schools system we are faced with a situation which cries out for change. The Office of Civil Rights has clearly demonstrated discrimination in New York City, perhaps not as blatant as in Boston, as Mr. Shanker pointed out, but discrimination nonetheless.

But what does the OCR report mean to parents, children, community leaders? Today we have heard a defense of meritocracy and by inference, the New York City Board of Examiners. When it was created seventy-five years ago, the Board of Examiners was believed essential to counteract widespread political corruption in school appointments. However, events have since rendered the Board of Examiners obsolete. Beginning with the Strayer and Yavner Report in

1951, repeated studies have called for its end or drastic revision. Another report in 1961 called for its abolition. The Bundy Panel of 1967 stressed the need for denying it sole authority in licensing. The 1972 Fleischmann Commission Report concluded that the centralized lists of eligibles promulgated by the Examiners should be eliminated and the Board of Examiners abolished.

Given this history, one would have thought that this anachronistic institution would long ago have been abolished. Change, however, is very slow in New York City. In 1977, the Board of Education's Office of the Deputy Chancellor conducted an investigation of employment and assignment of professional personnel in an effort to respond to OCR charges. The study concluded that New York City and Boston had two of the worst urban records in hiring black school staff. The same report substantiates the OCR finding: "Analysis conducted by the office of the Deputy Chancellor confirms that the rank order process has a disparate impact on minority teacher applicants." In addition, a federal district court has reached the same conclusion in the Rubinos Case, which required boards of education to show that their testing procedures have a demonstrated relationship to successful teacher performance.

The Office of Civil Rights has shown us where New York City stands in relationship to other cities in the number and percentage of minority teachers. Indeed, it even depicted the segregation of the teaching staff and the student body. It is time for us to change those systems or methods and work together to make equality of opportunity - which is now but a dream - into a reality. A broad coalition can change the state education law, abolish the Board of Examiners and recommend a new system of teacher and supervisor

selection, one that takes into consideration aptitude and potential and not only test scores.

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Nathaniel R. Jones, Jr.
General Counsel
National Association for the Advancement
of Colored People

I hope that I don't abuse the courtesies that are accorded a guest by setting up an outline which I think will more effectively meet the challenge posed by the problem. I've read the questions that have been submitted and I choose to defer my answers to those questions because I fear that they take us into the very trap that Doctor Reid warned us about this morning. I also fear that these questions suggest a process by which we are "trying" OCR. I don't think OCR is the problem. So I am very wary about participating in a process which would place OCR on trial rather than deal with the basic problems I think the parents are concerned with and about which my organization as a civil rights entity is concerned. I fear that this conference might be placing the burden where it's all too often placed: on the minority parents and the minority children and at the same time censoring, if you please, the Office of Civil Rights which is doing no more than what the law requires it to do.

On May 12, 1964, the New York State Department of Education stated, in a report:

> "We must conclude that nothing undertaken by the New York City Board of Education since 1954 and nothing proposed since 1963 has contributed or will contribute any meaningful degree to de-segregating the public schools of this city. Each past effort, each current plan and each projected proposal is either not aimed at

> reducing segregation or is developed in too limited a fashion to stimulate even slight progress toward de-segregation."

The history of the New York school system is one, since that time, that remains riddled with all of the known devices for creating, maintaining and perpetuating segregation. Those were identified by the report issued by the state at that time and they still exist in large measure. The basic policy that flows from those techniques is one of containment. The extent to which containment can be pierced and bridged depends upon the perseverance and determination and resolve of minority parents and their children to force themselves out of the confines of this area of containment.

The latest justification that we see for maintaining the lines of demarcation and this policy of containment is that if whites are forced to join with or are introduced into a desegregated educational setting in numbers less than a majority, overwhelmingly white, they will flee and the system will become re-segregated. Therefore, to keep them in they are offered sanctuaries. We look at the overall numbers and are told if we don't preserve what we have we'll lose, from their privileged sanctuaries of whiteness, that percentage of whites which we do have. Therefore they are bribed (and this is nothing short of a bribe) to remain in the system so they will be a part of the overall numbers. In the meantime, black and Hispanic children are warehoused in facilities which are rigidly segregated.

I might note that the very year that this indictment was issued by the State Department of Education was the year that Congress enacted the 1964 Civil Rights Act with its Title VI. Sadly, each effort that is made by individual parents, organizations such as the N.A.A.C.P., the Legal Defense

Fund, the Puerto Rican Legal Defense Fund, ACLU and now OCR is met with all kinds of legal and political resistance. We need to bear in mind that HEW's authority and the authority which it is exercising comes from an enactment of Congress which is attempting to transfer and import into New York and into other jurisdictions the spirit and the promise of the Brown, 1954 Supreme Court decision.

When HEW says that it is going to terminate funds if there is no compliance with the requirement of Title VI, it is not acting punitively. It is acting in keeping with the national policy: that the federal government cannot fund or subsidize directly, indirectly or through any arrangement, segregation. That is illegal. Therefore, the Civil Rights Act of 1964 and OCR become the vehicles through which the spirit and promise of Brown and the conscience of the country and the guarantees of the Constitution are being made real for minority children.

The findings made by OCR with respect to the New York City schools are well known. I will not trouble you with them. But we know that HEW's OCR has made a series of findings with respect to the segregated condition that exists in New York City. That effort to compel compliance was met with extreme resistance following the release of the Letter of Findings. The School Board, rather than using its resources and ingenuity to devise a way to bring this system into compliance, embarked upon a mammoth expenditure of resources and ingenuity and manpower for the purpose of justifying the unjustifiable. This is the common pattern that we have seen all over the country. What troubles me about what I see here in New York is the intimation that somehow the Civil Rights Act of 1964 and the Brown decision became the law

of the land fifteen minutes ago. Brown was handed down in 1954. That was a long time ago.

To suggest that somehow New York enjoys an immunity from national policy, the national constitution, and laws enacted by the Congress is very puzzling. What we hear instead of professions of an intention to affirmatively move forward to comply with the law, is rhetoric about having a "gun put to our heads," being "forced against our will;" and about the sanctity of collective bargaining agreements. What needs to be known is that all of these arguments have been raised before - George Wallace raised them and Ross Barnett raised them. They were also unfurled by Orval Faubas inArkansas. These matters have been advanced as justifications in the past and adjudicated by the courts. The bottom line is that they all must yield when the efforts are being made to eliminate unconstitutional and illegal segregation.

I think that this city should hang its head in shame over the way it reacted to Judge John Dooling's decision last week in the Andrew Jackson case. A very minor, modest ruling dealing with one school, essentially, held that that school cannot remain in its present segregated condition. The Court directed that a new plan be adopted. Well, you would have thought that an atom bomb hit this town. The way the media set upon that poor little white girl, once they discovered her identity, was one of this city's darkest hours. They sought to make of her a monster and a freak merely because she chose to go to a school that was overwhelmingly black and she was white. A sophisticated media such as New York City has - the New York Post, the Daily News, the television news teams - all rushed around like a

bunch of wild animals looking for this single little white girl because she dared walk into a school that had an enrollment of 2500 blacks. Upon finding her, they proceeded to ask such penetrating questions as "Weren't you afraid?" "How did they treat you?" "Why did you do it?"

I realize in discussing this that I may have stepped out of the role of a lawyer. However, to me, there are some fundamental things we need to address. The issue has been transferred and perverted to that level and into that arena which prompts a direct response. Only when we understand that can we understand what Dr. Reid was saying this morning. Quite frankly, my friends, we can't deal with segregation as though it's something that just happened yesterday. We are dealing with a long history of racial treatment in this country and unless we see it in its historical context we will be continuing to put questions such as we have here on this sheet and which I have refused to address.

What minorities are resentful of and what stirs their passions is the suggestion or the intimation that when they seek to have the laws of the land enforced, particularly in a city like New York, laws that were previously enforced in Mississippi, Florida, Alabama and Georgia by OCR, we somehow act as though the government is running amok. We hear the same answers, the same responses, the same defense, the same justifications that were spoken in the South. Many of the persons here who were speaking these justifications now brag about having linked arms with Martin Luther King, Jr., in Selma, having been in Montgomery and in Birmingham.

So minorities, particularly blacks, are justifiably aroused and disturbed at the responses that they hear in New York: that there's something

insidious about them insisting upon the laws of the land being enforced in this city without being accused of creating a situation of reverse discrimination, or having those actions characterized as preferential treatment. And so I think, as we discuss this problem of education in New York City, we should not take the one agency that has demonstrated that it has the muscle and the authority and the clout to bring about change in the face of default and refusal by the New York City Board of Education and to an extent, the State Department of Education, and place it on trial. The reason OCR is here is because no one else had done the job. The courts haven't even done the job. To the extent the courts have done anything, it has been on a one-by-one basis where we bring a suit in a limited area dealing with a limited question. OCR is the only entity that has the power and the resources to come in and face a system as massive and as huge as New York.

Quite frankly, until local officials decide to act affirmatively and positively the policies that they seek to hide behind and the smoke screens that are unleashed and all the talk we hear about local control will stand for naught because the supreme power of this country resides in the Constitution. It's not the other way around. There has been a default here, and there has been failure. The violations are clear. Violations in regard to hiring and assignment of staff, instructional staff, administrative staff have occurred. Schools are still segregated. And, to the extent that there are white children left in this system they should be de-segregated and integrated into the system. We should not be faced with a situation of extortion and told by white parents that "if you re-assign my kids, I'll

leave the system." Neither should we be required to yield to blackmail by warehousing black children in overcrowded one-race schools, while we preserve whiteness in some sections of the school system as though they were untouchable sanctuaries.

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Larry M. Lavinsky
Chairman
National Civil Rights Commitee
Anti-Defamation League of B'nai B'rith

I'm always deeply moved and deeply troubled after I've heard Nate Jones. He raises some awfully difficult problems. But I'm also deeply troubled when I hear a government official speak in terms of general principles, lofty general principles, without providing specifics. We heard this morning from Dr. Reid that there would be unrelenting enforcement of "general eternal principles", despite fears, despite economic impediments, despite all sorts of human problems. I worry when someone sets him or herself up as the law and the enforcer of such nebulous terms. Sure, justice for all, equal opportunity for all, but what does that mean in a particular context? We were not told.

Of course we have to desegregate our schools to the extent that it is within our power to do so. We've got to do everything possible to try to live up to the letter and spirit of the Constitution. But there's a reality in this city and Chancellor Anker described it for you this morning: The composition of the school population - 70% minority, 30% other. No HEW or Office of Civil Rights edict can change that. That's the way it is. Maybe someday school integration will reach into the suburbs; maybe it won't. But the fact is that in this city, any efforts at integrating the schools faces the reality of a steadily declining white student population.

U.S. Federal District Judge Dooling just handed down a decision

dealing with this problem in connection with New York City's Andrew Jackson High School, involving probably the most egregious statistics anyone could imagine. There were 2,532 students registered - only one was white. What did Judge Dooling find about the New York City school system and the desegregation efforts of the Board of Education? When you hear what he had to say, remember that he is not an official of an administrative agency whose investigators are free to come up with what they think may be the fact and to make all sorts of charges without lawyers on both sides, without cross-examination and without an opportunity for interested persons to be heard at an open hearing. This is a judge who listened to testimony running thousands of pages. He sat and deliberated for many months before he rendered a decision.

You heard a little about Judge Dooling's opinion this morning. You'll hear more from me because I think it's terribly important given the accusations that have been made against the Board. Judge Dooling wrote: "Such de jure segregation by race as may once have existed in New York in the now distant past is not a factor in the analysis of the present case. There was no 'dual' system created by old law to be dismantled." "The concern in the present case is not at all 'segregative intent'.... If that were the inquiry here," says Judge Dooling, "the answer would be that there was no covert purpose to segregate concealed under practices that professed to be directed to integration. The evidence requires the conclusion that the Board has striven throughout to avoid racial imbalance in the schools, to redress it where it could be redressed, and to compensate for it where it could not." Judge Dooling

concluded that "The Board's policy is one of affirmatively seeking to integrate the schools as a principle of education. The policy was and is real." What clearer vindication can a Board of Education receive at the hands of an eminent jurist?

Judge Dooling did order desegregation of Andrew Jackson High School. He did so because the Board, in an effort to maintain as many schools as possible in the Borough of Queens with a non-minority population of at least 50%, limited the right of Jackson students to transfer to other schools. Judge Dooling disagreed with this approach, and believed that it gave him the constitutional right to order desegregation. He may be right; he may not. That is a matter for the appellate courts. All I am saying is that one certainly gets the feeling from the opinion that the New York City Board of Education tried in every way it knew how to prevent or lessen the effects of demographic change. O.K, now we are going to have a redistribution of students in Queens and we will have a lower percentage of non-minority students in various schools. Hopefully, the new approach will work. I sincerely hope it does. But the fact of the matter is that white flight is continuing. How does one stop it? How does one turn it around? I wish I knew the answer.

Given the problems in New York City, it is all too easy to hear a series of accusations against the Board by the Office of Civil Rights and simply to assume that they are true. Maybe some of them are true, and there is always room for improvement. But there is good reason to believe that a number of the accusations are baseless. Judge Weinstein who had the case involving the Board's settlement with the Office of Civil Rights

concluded that there ought to have been a hearing and he ordered such a hearing at which the Board and other interested parties can be heard. Certainly, when the Office of Civil Rights has the power to cause immense dislocation in a city by withholding millions and millions of dollars, this is an irresistible threat. Nate Jones talked about blackmail. I submit to you that the Office of Civil Rights has within its arsenal an almost absolute power of blackmail which it does not hesitate to use. It undoubtedly does so with the best of intentions. But the result can be extremely mischievous and the public is at least entitled to the protection of a hearing such as that ordered by Judge Weinstein.

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Philip Kaplan
President
New York City School Boards Association

Before I answer the question, I think it is appropriate that I tell you a little about myself. I was born in Brooklyn and educated in the public schools of New York City. My father operated a butcher store and I was a chicken plucker and delivery boy most of my adolescence. I was kept back in the first grade because I was bilingual and spoke little English. An Irish-American teacher taught me to speak English well enough to get into the second grade. I came out of one of the so-called minority groups that make up New York, and now I am called middle-class. I have no desire or intention of ever leaving this City.

One of the previous speakers stated that we are "warehousing" children. I say we are educating and preparing them as best we can for a better life.

Representatives of HEW and OCR come to New York City and tell us that they are blessed with the intelligence and know-how to save us from ourselves. I am sick and tired of being told by Washington-based government bureaucrats how to run the school system in New York and how to meet the special needs of the children of New York. I was told this morning, in connection with the Jackson High School decision, that the school system should be ashamed of itself for permitting the segregation of students in that school. Obviously, neither the speaker nor anyone else from his organization did his homework, for he knows nothing of the efforts by the Central Board to

respond to the particular needs of the community involved.

I, too, am head of an organization. I am president of the New York City School Boards Association, which represents twenty-eight school districts. We represent all the children in elementary and junior high schools in our districts. We do not represent the high schools, so I have not had much involvement in that particular problem; otherwise, I would have been able to respond to these irresponsible charges directly. Admittedly, we do have problems in New York City, but one of our biggest is the bureaucrats announcing that they have cures for all our ills and that they know what is best for our own good. They use a special form of blackmail to coerce us into obedience.

The truth is we are educating children, and we are turning out a good product. Our children are bright, and they are learning well. Frequently, the housing for our children is not the best. We have a severe problem with unemployment, and there is often a struggle to keep the family unit intact. Many of our children come from homes without adequate parental supervision. Pressures are placed upon teachers in the classrooms; they are surrogate parents and too often they are forced to bear most of the blame.

Mind you, I am not a professional educator. I became a Certified Public Accountant and then an attorney and, finally, head of the New York City School Boards Association and head of a decentralized school district. I firmly believe that you can achieve if you want to achieve; you can move ahead if you have the motivation and desire to move ahead. I am, as I said before, a product of the New York City public school system.

We are admonished by the OCR that "the law of the land" must be followed. As a practicing attorney, I know that the purpose of the entire court system is to interpret just what the law of the land happens to be from time to time. I also know that the law of the land can be changed.

I am infuriated by those who tell us, in derogatory tones, that New York is no better than the South. They compare the nation's largest metropolis with the rural areas of Mississippi, Alabama, and Louisiana. This is an unfair misrepresentation and is patently ridiculous. In District 15, Brooklyn, where I am president of the Community School Board, our student ethnic breakdown is 51% Spanish speaking, 30% Black, and the balance, "Other".

The question I am attempting to answer is, "How have OCR rulings affected the governance and management of schools?" It has made it chaotic! We are unable to plan or do anything on a long-range basis. We are being blackmailed. When we are successful and children make educational progress, we lose funding because they read above the 45th percentile and no longer require special services. A loss of funds means a loss of teaching positions. Moreover, OCR insists upon monitoring the race of the teachers as they are shuffled around because of funding cuts. This is a crossword puzzle, not education.

Few who have spoken during this conference have talked of children or of education. Most talk about jobs and about how to color coordinate various positions. I am not interested in moving personnel around. I am interested in educating children. I am interested in seeing to it

that children come out of our schools able to read and write, equipped to become useful and productive citizens. I think we are accomplishing that goal in the New York City public school system.

Representatives of governmental or private organizations who come to the City to tell us how to run our school system should think first of children and of education, and not of the special interests of their organizations. Yes, the school system can be improved, but improvement in education does not necessarily come from the suggestions of the Office of Civil Rights.

"THE IMPACT OF OFFICE OF CIVIL RIGHTS RULINGS ON LOCAL POLICY MAKING IN EDUCATION"

Blanche Lewis
Chairperson
City School News and Past President
United Parents Association

This morning Dr. Usdan said he looks younger than he really is. I want to say that after twenty-three years of involvement in New York City educational politics, I'm really younger than I look.

In the years I have worked with the public schools I have seen many programs initiated. Unfortunately, I have also seen the majority of them fall flat on their faces because of faulty implementation, though the idealism behind them was justified. For example, my children were involved in the first open enrollment pilot project in Brooklyn. Their school, P.S. 135K, was under-utilized. The student enrollment had fallen from 1000 to 400. Many of the schools in the district had the same problem, even though surrounding districts were overcrowded. The Board of Education said they would bus the children from surrounding districts into our schools. The parents association was in favor of the program. They did not want to see their schools close; they did not want to see their children sent to other schools. They were willing to work for a viable school program. But when our children arrived there were no books, chairs, or lunch ready for them. It was not because the parents association and Principal didn't try to get these things for them. We went to the Board of Education and pleaded with them to give us the necessary tools to make the program work. But they offered no help. There was then no Office of

Human Relations to train teachers so they could understand what was going on and help parents who really wanted to see this program work.

We went from Open Enrollment to many other panaceas, among them decentralization. All of which have had little success.

I think that I have strayed somewhat from the topic of "The Impact of the Office of Civil Rights Rulings on Local Policy Making in Education". At the outset I will venture to say that their overall impact has been negative. Why? Because they do not consider the involvement of local policy makers to be important. Their rulings are handed down from above, not shaped at the grassroots level. The people affected by those rulings have no role in their development so that even worthwhile goals are often doomed to failure because of the way they are developed.

I recently served on a Committee for the Chancellor, which promulgated regulations concerning the hiring of supervisors in the school system. The Office of Civil Rights looked at this process and ruled it discriminatory because not enough women supervisors were being hired. OCR then ordered that changes be made. They were right, and while we were willing to make those changes, we wanted to talk about them with OCR. As chaiperson of the committee, I wrote seven letters to OCR and never received a response. I also sent notices of all meetings that were held and invited their participation. They never came. It is obvious that no matter how worthy the purpose, it cannot be carried out unless OCR deals fairly with the consumers of education, the parents, the school authorities, and the teachers.

Though the goals of the Office of Civil Rights may be worthwhile, when they act they separate themselves from people. Their functionaries behave as bureaucrats and entrap us ever deeper in the murky world of incomprehensible rules and regulations that tend to strip us of our rights and powers.

Now, I would like to respond to a panelist's statement about the "Politics of Education." We were told that "the myth of separation between politics and education must be dispelled." Parents dispelled that myth ten years ago. We knew then that coalitions would have to be forged. We knew that if you wanted to be involved in policy making you would have to be involved in politics. What I want to tell you, though, is that politics is a dirty business. So-called coalition politics is not in the best interest of children and education. There is so much bargaining, so much unethical behaviour, so many amoral tradeoffs. Parents have learned the lesson that when you talk about political coalitions, it too often means surrendering their principles and integrity. It often means giving up their goals to compromise with others. I suggest that is not a coalition, but instead, a way of selling out.

I think politics is a dirty business. I think we have a weak state legislature. I think we have an even weaker city government. We have had to resort to court action so often because we have weak Boards of Education that do not know the difference between policy making and administration. We have had boards that do not like to take stands because they want to be all things to all men.

When it came to integration, there were few who wanted to stand up and

say we must integrate our schools. Did our Presidents stand up? Did our Governors stand up and tell us that integration was right? Did our Mayors stand up? We have not had good examples set for us, and so our children have to suffer the negative effects of segregation.

I also think the New York City school system is a good system with a great many faults. I recently visited some of the local school districts. I met with teachers, principals and parents. I saw what children were doing in the classrooms and so much of it was good. I visited so-called "minority districts" and "white districts" and heard from each of them the identical educational complaints: "Keep the bureaucracy off our backs, help us to pay attention to what is going on in the classroom . . . give us the resources and the tools . . . don't tie our hands . . . let us carry out the programs we know will work, and we'll give you the best city school system."

I have faith in these people. I hope they succeed.

CONFERENCE WORKSHOPS: THE PARTICIPANTS EXAMINE THE CONTROVERSIES

Prepared and Edited by

Donald Edward White

Description of the Workshops

The Conference featured four workshops in which those in attendance broke into smaller groups for analysis and development of questions to be asked in the afternoon session. Each of the workshops was led by one of the following facilitators:

Leo Goldman, Professor of Education, Center for Advanced Study in Education, Graduate School and University Center, CUNY

David Lavin, Associate Professor of Sociology, Lehman College

Anita Moses, Director, Educational Planning Institute

Carol Tittle, Project Director, Center for Advanced Study in Education, Graduate School and University Center, CUNY

In each of these workshops, there took place a discussion of issues concerning the local impact of Office of Civil Rights (OCR) rulings. Since there was considerable overlap among the discussions, they have been consolidated and organized, for descriptive purposes, into the issues which were raised. References to specific sessions are indicated by the initial of the group facilitator (G, L, M or T).

The participants in each of these workshops dealt with various educational controversies and the relationships which they have to OCR policy. Although a rather diverse spectrum of positions were maintained, there

seemed to be a general desire to find ways of facilitating educationally constructive interaction between OCR and local boards of education. Efforts toward accomplishing this tended to focus upon two approaches: a recasting of some of the educational issues in contention and an examination of the significance of OCR structure and function.

Educational Issues

Among the issues which were raised was the question of what constitutes the most appropriate criteria for the selection of staff. In one of the workshops, it was brought up as follows:

> The greatest controversy this year regarding the impact of OCR in the city has been the agreement that was reached as to staff integration. There have been contradictory philosophies over the last decade: one has said that students of various colors, specifically minority students, need role models as their teachers and therefore can relate better to teachers of their color; the other one has said that students need a complete range of teachers and will learn to deal with society better if they have that range in terms of the people they're dealing with in their educational lives. A question I think we might want to ask is, "Where do we stand now, given all of that confusion? What is the educational relationship of students and the color of their teachers?" (M)

The question of whether or not teaching positions can be seen as a right accruable to various groups was discussed:

> I don't think that any of the civil rights groups have ever had the idea that you must have black teachers to teach black children on the grounds that they will learn better. I think the idea of employment is really the employment of the teachers themselves and not whether or not they're going to teach a particular child. It goes back to the basic economic situation, the issue of whether or not black teachers or Hispanic teachers have a right to these jobs in these schools. (T)

> A <u>right</u> to teach in the schools? What, other than demonstrable competence, constitutes the proper criterion for choosing a teacher? Do we not want the most competent possible people teaching in the schools? (T)

One participant raised the possibility of making an employment criterion out of one's sensitivity to the cultural backgrounds of the student population. Such a criterion, if valid and if applied objectively, may offer a means of uncovering competence among culturally diverse teaching candidates.

> I think that we speak of the need for cultural backgrounds to balance our academic background. I am talking now about what we're calling, or has been called, black culture/Hispanic culture or minority culture, and I think that there is something real about that. We might be dealing with a real issue for employability. Some people are more sensitive to cultural background than others. Could we put that into an employment requirement? (T)

Within the rather spirited discussion, one encounters the theme that the challenge before policy makers is to establish and maintain an educationally sound method of staff selection. It was the selection process, rather than the product of selection that drew the primary focus of the discussion. The development of an appropriate model for this process appears to be a major concern of those involved with the task of providing optimally successful instructional staffs within the schools.

Another issue which was addressed concerned the relationship between desegregation and educational equality. Assuming that segregated public schools can be held to constitute a source of educational inequality among the nation's racial groups, several workshop participants questioned the relative amount by which one ameliorates existing inequality by eliminating this single source. To question the amount of educational achievement resulting rrom desegregation is not necessarily to question its desirability.

However, as seen below, the discussions which ensued did lead some of the participants to suggest a reassigning of priorities in the struggle against educational inequality.

> What evidence is there of an impact upon education caused by Civil Rights rulings rather than by the issues of employment, housing, jobs, etc. Are they the appropriate places for us to pour our funds and commitments to turn around the disparities in education between black and white children in this country?
>
> I make the assumption in my questions that the goal of Civil Rights, the goal of educators and Superintendents of the (New York City) Board of Education is to improve the educational quality of all the children, and particularly black children, because of the disparity that now exists.
>
> I'd like to know what is being done to address those issues, rather than to fool around with the numbers game, the shifting game or the transfer game, and try to get at the roots of why better performance doesn't take place. I'm not speaking of Jensenism because I reject it as a doctrine. I think there's great hope for all races in this country, and I think we're putting the shots on the symptomology rather than on the causations. (T)

It was suggested that an emphasis upon desegregation presented the potential danger of diverting attention and energy away from the expectation of competence among minorities.

> What is being said to me, a black parent, is that my child could only attain a proper education if he's integrated in the proper school. I disagree with that. I say that we should address ourselves to the fact that we deal with quality education. I think that over the years we tend to come up with too many excuses for not dealing with the real thing and what is going on in the classroom. Everyone gets hung up and starts to excuse the children's not learning.
>
> I'm just afraid that again we're going to get hung up in this integration thing and use it as an excuse for not really dealing

with the quality of education that's supposed to be there, regardless if it's your neighborhood, my neighborhood or anyone else's neighborhood. Those little things that you're talking about, integrating and so forth, should be after the fact. (M)

I want to ask the question of what it is we hope for kids in minority groups and whether or not the things that were described this morning are going to improve what happens with minority kids. I wonder if we have models somewhere in the country which do have hope for improvement of the education and the eventual destiny of these kids in our society. I am worried about a cop-out, of taking a look at the numbers of black teachers that were assigned, or the numbers of white teachers that were assigned,or looking at all the superficial things that have been described as appearing in the Civil Rights report, and thinking naively, in my estimation, that if you change all of those things, the eventual lot of black kids will change. I think this has to be looked at in terms of whether it is a smoke screen for avoiding the real issue of what's going to happen to the education of minority kids.

We have a model of activity involving decentralization which I think was also a delusion - the expectation that if we turned over the governance of school districts, things would happen for their kids which would be different. The whole disillusionment that has taken place has caused many black people to withdraw themselves, because they feel that's not going to make the big difference for their kids.

What will make the difference? That's where the emphasis in this conference ought to be. What is going to make the difference - to have black kids perform, black parents be proud along with white parents, and provide blacks and whites jobs in our society? I don't see any great hope for that in the piddling around with peripheries that I see in Civil Rights directives. (T)

A point of contention was whether or not a focus upon other variables affecting the quality of a school would provide a more effective force for its ultimate integration. The question might be seen as one of emphasis in an era of finite resources. Should the greater weight be placed upon integration as a vehicle for promoting educational equality, or should there be a greater stress of other factors which might enhance educational equality

as a way of helping to promote integration? One exchange proceeded as follows:

> When you talk in terms of white flight, quality of education and so forth, remember that when students apply to the High School of Music and Art or Brooklyn Tech, they're not interested in the percentage of black children that go to that school. They apply because the school is good and it offers them something. They're not interested in who they sit down beside. Maybe if we begin to deal with this, then maybe we can finally attempt to deal with integration, because those kids in those schools do not care about the number of blacks or whites there. Those are good schools. They want to go, and they apply to go, and they fight very hard to get in there.
>
> So when you're talking in terms of white flight - black flight, and so forth, let's get back to how you can really deal with the quality of education. I'm sure if Andrew Jackson High School carried the kinds of philosophies of the High School of Music and Art, we wouldn't have the kind of court decisions that are flying all over because people would want to go there. (M)

> I agree with you in part, but I'd just like to say one thing. I happen to know Andrew Jackson very well and another (primarily minority) school in Queens, August Martin, which has an excellent curriculum and excellent student body. But it has not in one way changed the racial balance of either school. (M)

It should be reiterated that, in general, what was called for was not an abandonment of integration as an educational goal. It was suggested, instead, that one refrain from dealing with this issue in isolation. What was proposed was not a restricting of efforts, but rather a broadening of perspectives. The concern may have been best captured in the questions posed by the following speaker:

> What can the Office of Civil Rights do to help bring about better education or quality education in the City of New York or in any urban center? Do quality education and the attainment of Civil Rights not have some relationship to one another? (M)

If the workshops produced a call for a broadening of perspectives concerning the causes of educational inequality, they also evoked the suggestion that these perspectives be expanded to a consideration of variables that influence the success of the integration effort once desegregation is attempted. The flight of students to non-public and suburban schools was discussed. It was mentioned by several participants that "white flight" is a misnomer, insofar as there is an economic factor involved in this phenomenon. As one speaker said, "It is not just white flight, but black flight, as well." (M)

Also said to be related to the success of the integration movement are the group dynamics which occur among students in integrated schools. It was suggested that the mere blending of students into a school building might be insufficient to create an integrated student culture within that building. Of importance is also the manner in which the school desegration occurs.

> Throughout, I have had the feeling that we have expressed that integration in New York City has been re-segregation in terms of numbers. Integration has a much deeper impact on the individual's attitudes and patterns of behavior in terms of citizenship, accepting of people, and community. When we arbitrarily say that we're going to send a given number of youngsters from a certain area into another and call that integration, I think we really need to look at policy. (M)

The expressed sentiment was that the attainment of integrated schools represents a rather complex process having social implications which simultaneously extend beyond school walls and reach deeply within the functioning of the school. One might be tempted to characterize this view

by saying that the evaluation of the success of the drive for integration should not stop where the bus does. Quite the opposite, it is here that the evaluation of some of the most important issues may begin.

Office of Civil Rights Structure and Function

A number of workshop participants attempted to trace the educational issues raised above to the workings of OCR. One speaker brought up the possibility that dealing with a school system such as the New York City Public Schools requires greater levels of competence and sensitivity than OCR has shown.

> I think it has to be said that the competence of the OCR staff leaves much to be desired. In my district they came in and showed indications of a serious lack of knowledge of the school system they were dealing with. For example, at one point they confused in a paragraph IGC (intellectually gifted) classes and special education...
>
> Malevolence is not the point at issue. There's a point of simple competence. (L)

More discussion centered, however, upon the structure of OCR and its relationship to Congress, the Judiciary and to local boards of education. OCR, it was pointed out, is in a position of simultaneously being the establisher of regulations, judge of local compliances, and, through the withholding of funds, enforcer, where such compliance is judged not to have occurred. The comprehensive nature of this influence, it was feared, presented the risk of encouraging the agency to fall out of step with legislative and judicial mandate, a potential problem intensified by the

power of the federal government which lies behind its acts and makes it difficult for local boards to question its rulings. The following comments were made regarding the impact of the relationship between OCR and Congress:

> We are now having policy made by people who really aren't policy makers and who have no accountability to the public. We don't elect them. We don't impact on them as consumers or as part of the public or in any other way. (L)

> Yes, and there's a follow-up to what you're saying. There is a dichotomy between public law that is made by Congress and its interpretation through administrative fiat. We had the Civil Rights Acts of 1964 and 1966. Every time we met with OCR in our district, they would say, "Oh, this is based on that law." The law clearly covered what the administrative code was. Internally, OCR had made regulations that generated the various things that we have been discussing. These do not always relate to the original law.
>
> It is their accountability to Congress which made the original law where one finds the genesis of the whole problem. (L)

The enforcement role of OCR was said to inherently place the agency and local boards in an adversary position. One participant stated, "OCR is like the City Comptroller or the State Comptroller. You are always in an adversary position and don't look for good notes." (M)

Some consequences of this relationship were suggested.

> The mechanism of enforcement is a highly unfavorable one. The withholding of money and the possibility of extended litigation leads to rushes, leads to consent decrees which everyone really doesn't understand and leads to litigation over every type of agreement which can be made. (G)

The greatest amount of discussion dealt with the agency's judgmental

role. Concern was expressed over the kinds of criteria used by OCR to render their decisions.

If we could get a focus on explanations rather than statistics... (L)

Any ethnic composition can be generated by a number of different causes. There are a number of models that lead to the same design. Some of these models are, from OCR's point of view, more reprehensible, or should be.

There could be, from a values point of view, some processes which are benign, but which lead to something which looks suspiciously like segregation. There are other processes which are not benign, which also lead to these results.

You are saying that OCR only looks at results. (L)

Yes...let's stay away from an examination of just the numbers because that is causing more kinds of adversity, more kinds of stress. (L)

Questions concerning the burden of proof also emerged and elicited some discussion.

They say, "Because of the following, there is an inference that the district discriminates. Therefore, it's up to you to show us that you're not." So they're tossing the burden of proof on us, and they're assuming that a causal relationship exists between the percentage of youngsters in the district and their suspension or the percentage of youngsters and the "imbalanced classes" within the district. (L)

What's being raised here is a question of the specific types of statistical criteria which are evoked for drawing the inference of discrimination...and the other thing I am hearing is the question that when an inference of possible discrimination is made, is the burden of proof then on the object they say it is? (L)

> The practice of the Office of Civil Rights has been to inferentially draw from statistics that a discriminatory practice has taken place. They will look at the mound of statistics on minority groups in various classes, various grades, various schools and so on, and if the statistics do not fall within a certain parameter, they infer that there has been discrimination in practice. The question is: Is there any basis in the law or in judicial decision that such inferences may be drawn?
>
> Then, of course, they come in and the local board has to prove it is innocent. (T)

Attention was directed to the relationship between OCR rulings and recent court decisions concerning the issue of intent.

> I question whether the Office of Civil Rights is overstepping its bounds in using these forms of evidence as proof of discrimination. That, in turn, has to bring us to what the recent Supreme Court decisions have said about the need for more deliberate proof. My view of this, without having looked at those decisions terribly closely, is that it is quite possible that the Office of Civil Rights is now out of step with the Supreme Court. (L)

> There is a doctrine of intentional discrimination involving enforceability which says that if a public agency acts in a certain way so that it knew or should know what the consequences of its actions or non-actions will be, that is an intent...That has not been decided by the Supreme Court. That has not been adopted as a national proposition, but in exploring what intent means, this circuit adopted a view that intent means not just a purposefulness, but enforceability. They make a distinction where, if one thinks about hard cases, one comes up with a different conclusion as to the culpability of a board of education, and it has consequences for school districts in terms of what they have to show or don't have to show to justify their conduct. (G)

A question posed by one of the participants dealt with the scope of the doctrine of intentionality proposed above. It was asked whether, if culpability were determined through prior knowledgability of the consequences of policies, an administrative agency might be held accountable to

the same doctrine.

> In determining how a wrong ought to be righted, it seems to me that the same responsibility ought to be placed upon the administrative agency, such as OCR, in determining whether the consequences of its order may aggravate the wrong or whether it will eradicate it. (G)

Amidst the points raised regarding the administrative role of OCR, there seems to be two unresolved issues: If integration policy is made by an agency that also assumes a judicial function, is there a tendency for the success of this policy to be judged strictly in terms of compliance in its implementation? If judgment is rendered by an agency that also takes on an enforcement function, does the burden of proof become shifted to the entity which it brings charges against?

It might be suggested that the frustration expressed by some of the participants reflects their feeling of being in a relationship with OCR which precludes easy discussion of educational issues such as those raised in the workshops and reviewed earlier. If this has in fact been their experience, one might feel a need for a vehicle by which these issues may be raised and considered in the design and/or implementation of policy. The desire for such a vehicle was alluded to by several speakers:

> I think one of the things that ought to be approached is a mechanism by which there can be a recognition or a statement on the part of the Office of Civil Rights that they think something is wrong without necessarily having to withhold monies. (G)

> I would like to hear something about the notion of a partnership and how that can be explored and implemented. (G)

A forum for examining these issues brings with it the possibility of

determining which social and educational concerns are not attributable to OCR's influence. As a consequence, it provides the opportunity for alleviating misdirected controversy, while channeling energies to other more salient issues that are of concern to educational and civil rights policy makers. The potential for encountering unwarranted criticism of OCR was noted in the following manner:

> Are we, in a sense, blaming the Office of Civil Rights for what is happening in New York City? I think that is an interesting thought. Are we saying that because of the civil rights rulings, whites or blacks are running away from New York? I think that what we are doing is blaming the Office of Civil Rights for something that is much more than simply their impact. (M)

What is actually attributable to OCR rulings? What is not? To end with the question with which the workshops began is to reinforce the expressed need for a mechanism of examining and evaluating the kinds of issues that have been raised. One might give thought to the possibility that the attention directed to OCR structure and function is symptomatic of a need for such a mechanism, and that the reduction of this need provides enhanced opportunities for resolving some of the controversies responsible for much of the concern that has been expressed by the conference participants.

Conclusion

The workshops were well attended and quite lively. A wide range of questions were raised. In general, their focus was directed toward current educational controversies and toward the structure and function of the Office of Civil Rights. The remarks of many of the speakers suggested a desire to reshape the educational controversies in a manner producing an examination of issues believed to be overlooked in OCR rulings. The attention given to OCR structure and function may have been, at least in part, the result of a feeling that the present OCR - local board relationship does not allow proper examination of these issues. The development of a vehicle through which these issues may be explored and evaluated was suggested as a way of reducing some of the difficulties currently existing in this relationship. While the nature, scope and feasibility of such a mechanism remain unclear, it is significant in that it represents an attempt to develop options for constructive interaction between local boards and the Office of Civil Rights. To the extent that the production of such options can be stimulated through discussion among the involved parties, one hopes that their participation in the workshops and indeed throughout the Conference, provided a valuable step towards the achievement of this end.

SELECTED BIBLIOGRAPHY

Ashline, Nelson F. Ed., Education, Inequality and National Policy, Lexington, Mass: C.D. Heath, 1976.

Bailey, Stephen K. and Morber, Edith K., ESEA: The Office of Education Administers a Law, Syracuse: University Press, 1968.

Benson, Charles, Education Finance in the Coming Decade, Bloomington, Ind.: Phi Delta Kappa, Inc., 1975.

Bresnick, David, Lachman, Seymour and Polner, Murray, Black, White, Green and Red: The Politics of Education in Ethnic America, New York: Longmans, 1978.

Campbell, Alan K., "The Socio-Economic, Political and Fiscal Environment of Educational Policy-Making in Large Cities," in Michael W. Kirst, Ed., The Politics of Education at the Local, State and Federal Levels, Berkeley: McCutcheon Publishing Corporation, 1970.

Coleman, James S., et al, Equality of Educational Opportunity, Washington, D.C.: U.S. Government Printing Office, 1966.

Cronin, Joseph M., The Control of Urban Schools,Perspectives on the Power of Educational Reformers, New York: The Free Press, 1973.

Fine, Leonard, The Ecology of Public Schools: Inquiry into Community Control, New York: Merrill, 1972.

Gerard, Harold B. and Miller, Norman, School Desegregation: A Long Range Study, New York: Plenum, 1975.

Gifford, Bernard R., Race, Ethnicity and Equal Employment Opportunity: An Investigation of Access To Employment and Assignment of Professional Personnel in NYC's Public Schools, New York: NYC Board of Education, Office of the Deputy Chancellor, Policy Analysis Unit, 1977.

Glazer, Nathan, "Should Judges Administer Social Services," The Public Interest, 50, (Winter, 1978), 64-80.

Grant, Gerald, "Shaping Social Policy: The Politics of the Coleman Report," Teachers College Record, 75, (September, 1973), 17-54.

Greenbaum, William, "American in Search of a New Ideal: An Essay on the Rise of Pluralism," Harvard Education Review, 44, (August, 1974), 411-440.

Horowitz, Donald L., The Courts and Social Policy, Washington, D.C.: The Brookings Institution, 1977.

Iannaccone, Laurence, Politics in Education, New York: Center for Applied Research in Education, 1967.

Kaplan, George R.,"Federal Educational Policy in Transition," New York University Education Quarterly, 4, (Summer, 1978), 6-12.

Katz, Michael B., Class, Bureaucracy & Schools: The Illusion of Educational Change in America, New York: Praeger, 1971.

Kimbrough, Ralph B., Political Power and Educational Decision-Making, Chicago: Rand McNally & Co., 1964.

Kirp, David L. and Yudof, Mark G., Educational Policy and the Law, Berkeley: McCutcheon Publishing Corporation, 1970.

Kirst, Michael W. and Wirst, Frederick, The Political Web of American Schools, Boston: Little Brown & Co., 1972.

Kirst, Michael W., "The Growth of Federal Influence in Education," The Seventy-third Yearbook of the National Society for the Study of Education, Chicago: University of Chicago Press, 1974, III, 448-477.

Kluger, Richard, Simple Justice, New York: Alfred A. Knopf, 1976.

LaNoue, George R., and Smith, Bruce L.R., The Politics of School Decentralization, New York: D.C. Heath & Co., 1973.

Millstein, Mike and Jennings, Robert E., Educational Policy-Making and the State Legislature: The New York Experience, New York: Irvington Publishers, 1973.

Murphy, Jerome, "Title I ESEA: The Politics of Implementing Federal Education Reform," Harvard Education Review, 41, (February, 1971), 35-63.

National School Boards Association, The Impact of Federal Legislation and Regulations on Big City Schools, Washington, D.C.: National School Boards Association, 1976. (Proceedings of the June 1976 meeting of the Council on the Big City Boards of Education).

Orfield, Gary, "School Integration and Its Academic Critics," Civil Rights Digest, 5, 5, (Summer, 1973), 2-10.

Ornstein, Allan and Miller, Steven, Eds., Policy Issues in Education, Lexington, Mass.: Lexington Books, 1976.

Ravitch, Diane, The Great School Wars, New York City, 1805-1973, New York: Basic Books, 1974.

Reynolds, Frank and Wurdock, Clarence, Integrating Schools in the Nations Largest Cities: What Has Been Accomplished and What Is Yet To Be Done, Ann Arbor: Center for Population Studies, 1977.

St. John, Nancy, School Desegregation: Outcomes for Children, New York John Wiley & Sons, 1975.

Scribner, Jay D., Ed., The Politics of Education: The Seventy-sixth Yearbook of the National Society for the Study of Education, II, Chicago: University of Chicago Press, 1977.

Shields, James J., Jr., "Steps for School Reform: An Agenda for Education for Democratic Political Community," Educational Studies, 1975, 6, 3/4, 146-161.

Smiley, Marjorie B., and Miller, Harry L., Eds., Policy Issues in Urban Education, New York: The Free Press, 1968.

Tyack, David B., The One Best System, Cambridge, Mass.: Harvard University Press, 1974.

Wolf, Eleanor P., "Social Science and the Courts: The Detroit Schools Case," The Public Interest, 42, (Winter, 1976), 102-120.

Ziegler, L. Harmon, Jennings, M. Kent, and Peak, G. Wayne, Governing American Schools, North Scituate, Massachusetts" Doxbury, 1974.